

SENATOR TROY FRASER
CONFIDENTIAL TRANSCRIPT

7/23/2014

1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, et al.,)	
)	
Plaintiff,)	
)	
VS.)	CIVIL ACTION NUMBER:
)	2:13-CV-193 (NGR)
RICK PERRY, et al.,)	
)	
Defendants.)	

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	CIVIL ACTION NUMBER:
)	2:13-CV-263 (NGR)

TEXAS LEAGUE OF YOUNG VOTERS)	
EDUCATION FUND, et al.,)	
)	
Plaintiff-Intervenors,)	
)	
TEXAS ASSOCIATION OF HISPANIC)	
COUNTY JUDGES AND COUNTY)	
COMMISSIONERS, et al.,)	
)	
Plaintiff-Intervenors,)	
)	
VS.)	
)	
STATE OF TEXAS, et al.,)	
)	
Defendants.)	

TEXAS STATE CONFERENCE OF)	
NAACP BRANCHES, et al.,)	
)	
Plaintiffs,)	
)	CIVIL ACTION NUMBER:
VS.)	2:13-CV-291(NGR)
)	
NANDITA BERRY, et al.,)	
)	
Defendants.)	

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1 BELINDA ORTIZ, et al.,)
)
2 Plaintiffs,)
)
3 VS.) CIVIL ACTION NUMBER:
) 2:13-CV-348 (NGR)
4 STATE OF TEXAS, et al.,)
)
5 Defendants.)
)

6 *****
7

8 DEPOSITION OF
9
10 SENATOR TROY FRASER
11 JULY 23, 2014

12 *****

13 HIGHLY CONFIDENTIAL

14 ORAL DEPOSITION OF SENATOR TROY FRASER, produced as
15 a witness at the instance of the Plaintiff, was duly
16 sworn, was taken in the above-styled and numbered cause
17 on the JULY 23, 2014 from 9:03 a.m. to 7:57 p.m., before
18 Chris Carpenter, CSR, in and for the State of Texas,
19 reported by machine shorthand, at the Office of the
20 Attorney General, 209 West 14th Street, Austin, TX
21 78701, pursuant to the Federal Rules of Civil Procedure
22 and the provisions stated on the record or attached
23 hereto.

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6

FOR D.C. LULAC:

7

Armand Derfner (appearing by telephone)

8

ALSO PRESENT:

9

Roberto Rivera, summer intern with WilmerHale

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1 MS. FARANSSO: Good morning, Senator
2 Fraser. My name is Tania Faransso and I'm an attorney
3 representing the Texas League of Young Voter's Education
4 Fund and Imani Clark, who are the plaintiff intervenors
5 in this matter. And there are a number of people around
6 the table, so I'll have everyone introduce themselves
7 for the record.

8 THE WITNESS: Could I stop you for a
9 second, please. I have a reasonably severe hearing
10 loss, and when you speak very quickly, I miss three-
11 fourths of what you say, so I will probably be asking
12 you to slow down and speak slower --

13 MS. FARANSSO: I can do that --

14 THE WITNESS: -- and clearer. And I'm
15 sorry, I just -- I have trouble sometimes hearing what
16 is said.

17 MS. FARANSSO: I can do that.

18 THE WITNESS: Thank you.

19 MR. SHORDT: I'm Richard Shordt with the
20 Texas League group as well.

21 THE WITNESS: Wait, wait, stop. You're
22 with who?

23 MR. SHORDT: Texas League of Young Voter's
24 Education Fund, Texas League group.

25 MS. HALPERN: Which of you will be

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1 questioning today?

2 MR. SHORDT: Ms. Faransso.

3 MS. HALPERN: Okay.

4 MS. WESTFALL: I'm Elizabeth Westfall for
5 Plaintiff, United States.

6 MR. RIVERA: I'm Roberto Rivera, Texas
7 League.

8 THE WITNESS: Texas League also?

9 MR. RIVERA: Yes.

10 THE WITNESS: Okay.

11 MR. SCOTT: John Scott, AG's Office.

12 MS. PAUP: Brooke Paup, AG's Office.

13 MS. HALPERN: Linda Halpern for the
14 witness.

15 THE COURT REPORTER: Who's on the phone?

16 MR. DERFNER: Armand Derfner, D.C. LULAC
17 Plaintiffs.

18 (Witness sworn.)

19 MS. HALPERN: All right. Before we start,
20 I'd like to make a statement for the record. There
21 appear to be three distinct parties that are represented
22 by counsel here today. As you know, it is our position
23 that the maximum amount of time this deposition can last
24 is 7 hours on the record, so I am making an announcement
25 now so there is no confusion or claim of lack of notice

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1 at the end of this deposition that we will be stopping
2 at the end of 7 on the record hours. So I would
3 encourage the three distinct parties that have counsel
4 in this deposition to confer and make sure that you
5 don't use each other's time up.

6 MS. FARANSSO: At the moment, we won't
7 agree to the 7 hours, but we can see how the day goes
8 and determine later.

9 MS. HALPERN: You can agree or not agree,
10 but we will be leaving at end of 7 hours on the record.

11 MS. FARANSSO: Understood.

12 MS. WESTFALL: Very good. And just for
13 the record, we will be seeking additional time if we
14 need additional time beyond the 7 hours.

15 TROY L. FRASER,
16 having been first duly sworn to testify the truth, the
17 whole truth, and nothing but the truth, testified as
18 follows:

19 EXAMINATION

20 BY MS. FARANSSO:

21 Q. Senator Fraser, can you state and spell your
22 full name for the record, please.

23 A. Troy L. Fraser, F-R-A-S-E-R. First name is
24 T-R-O-Y.

25 Q. A few moments ago you were sworn under oath. I

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1 know this isn't your first deposition, but do you
2 understand that you are expected to testify completely
3 and truthfully to the questions that I ask you today?

4 A. I do.

5 Q. Okay. If you'd like a break at any time, just
6 let me know and we'll be happy to accommodate you. I
7 would only --

8 A. And I'm sorry, I'm having a very difficult time
9 understanding you. You speak very, very quickly and
10 it's not going to work if we continue that, so I need to
11 advise you if you want me to answer your questions,
12 you're going to have to be able to speak where I can
13 understand you.

14 Q. I will try to slow down.

15 A. Yeah. I'm sorry. The other people that have
16 spoken, I don't appear to have as much problem. For
17 some reason, I have a problem with your voice.

18 Q. Okay. Again, if you would like a break at any
19 time, just let me know and I'll be happy to
20 accommodate you. I would only ask that if a question is
21 pending, that you answer the question before we take a
22 break. Do you understand?

23 A. You're still going very, very, very quickly. I
24 understand -- I believe what you said that if I want a
25 break, that I can ask for it.

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1 Q. That's right.

2 When I ask questions during this
3 deposition, it is important that you wait until I
4 complete my question before you begin to answer it.
5 It's also important that you give verbal answers as
6 opposed to nonverbal answers, which will help our court
7 reporter record our statements completely. Do you
8 understand?

9 A. I do understand.

10 Q. Okay. And if you don't understand a question
11 that I've asked, just ask for clarification and I'll be
12 happy to rephrase my question. Do you understand?

13 A. I understand very clearly.

14 Q. Okay. And if there's any -- at any time if you
15 recall information in response to a question that I have
16 already asked, feel free to let me know and I'll allow
17 you to supplement the record. Does that make sense?

18 A. Yes.

19 Q. Okay. Senator Fraser, is there any reason why
20 you may not be able to testify truthfully and completely
21 today?

22 A. No.

23 Q. Are you taking any type of drugs or medication
24 that may affect your ability to answer the questions
25 that I'm going to ask you today?

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1 A. No.

2 Q. Okay. When I use the term "minority voters" in
3 the deposition today, I'm referring to voters who are
4 non-White and non-Anglo. Do you understand?

5 A. No.

6 Q. I'm sorry, let me restate that. I'm referring
7 to voters who are non-White or Non-Anglo. Do you
8 understand?

9 A. No, there's many classes of minorities other
10 than non-White and non-Anglo.

11 Q. That's right. And I'm -- what I'm telling you
12 is that for purposes of today's deposition, I'm using a
13 definition where minority voters means non-White or
14 non-Anglo voters. Does that make sense?

15 A. Okay.

16 Q. Okay. When I refer to Senate Bill 14, I'm
17 referring to Voter ID law passed by the State Senate in
18 2011. Does that make sense?

19 A. Okay.

20 Q. Okay. Senator, are you represented by counsel
21 today?

22 A. I am.

23 Q. And who is your counsel?

24 A. Linda Halpern.

25 Q. Did you meet with your counsel prior to the

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1 deposition?

2 A. Yes, I did.

3 Q. When was that?

4 A. Yesterday.

5 Q. And for how long?

6 MS. HALPERN: You can say for how long.

7 A. Four hours.

8 Q. (By Ms. Faransso) Was anybody else present at
9 that meeting?

10 A. Additional counsel, Brooke --

11 MS. PAUP: Paup.

12 A. Paup?

13 MS. PAUP: Uh-huh.

14 A. Brooke Paup.

15 Q. (By Ms. Faransso) Was anyone else present?

16 A. No.

17 Q. Did you review documents at that meeting?

18 A. Yes.

19 Q. Can you describe generally what kind of
20 documents you reviewed?

21 A. Well, one of the documents was Senate Bill 14.

22 Q. Okay. Thank you. Did you do anything else to
23 prepare for today's deposition?

24 A. No.

25 Q. You did not review any other documents other

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1 than when you met with your counsel yesterday?

2 A. We reviewed --

3 MS. HALPERN: She's asking if other than
4 yesterday.

5 A. Other than --

6 MS. HALPERN: Other than yesterday, did
7 you review any documents?

8 A. Oh, no.

9 Q. (By Ms. Faransso) Okay. Thank you. Did you
10 speak with anyone before this deposition about the
11 deposition?

12 A. No.

13 Q. Did you have a conversation with Janice McCoy
14 about your testimony today?

15 A. No.

16 Q. Did you review the transcript of Ms. McCoy's
17 deposition that was taken in this matter on July 9th,
18 2014?

19 A. No.

20 Q. Did you speak with Senator Dan Patrick about
21 your deposition today?

22 A. No.

23 Q. And did you review the transcript of Senator
24 Patrick's deposition that was taken in this matter on
25 July 11, 2014?

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1 A. No.

2 Q. I know that you were deposed twice as part of
3 the Section 5 litigation under the Voting Rights Act in
4 2012. Do you recall that litigation?

5 A. Yes.

6 Q. And to refresh your memory, those depositions
7 took place on May 17th and June 13, 2012. Since your
8 deposition on June 13, 2012, have you been deposed or
9 have you otherwise testified in any litigation?

10 A. No.

11 (Exhibit 1 marked for identification.)

12 Q. (By Ms. Faransso) Senator, the court reporter
13 has --

14 MS. HALPERN: Look at this one, that's
15 your copy.

16 Q. (By Ms. Faransso) The court reporter has handed
17 you what has been marked as Exhibit 1. It's a subpoena
18 for documents in this matter that was issued to you on
19 April 17th, 2014. Have you seen this document?

20 A. No.

21 Q. To your knowledge, did anyone on your staff
22 search your work or personal computers for documents in
23 response to this subpoena?

24 A. Yes.

25 Q. And who was that?

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1 A. Terri Mathis.

2 Q. And what role does Terri Mathis hold on your
3 staff?

4 A. Chief of Staff.

5 Q. Is that Miss Mathis or Mrs?

6 A. Mrs.

7 Q. Did Mrs. Mathis search your hard copy files?

8 A. Yes.

9 Q. And did she search your computer files?

10 A. Yes.

11 Q. Did she, to your knowledge, handle all document
12 searches in response to this subpoena?

13 A. To my knowledge, yes.

14 Q. Were there any documents related to Senate Bill
15 14 or any previous Voter ID legislation that you had in
16 your possession that Ms. Mathis would not have had
17 access to?

18 A. No.

19 Q. Okay. When a bill has been voted on or when a
20 legislative session has ended, what do you normally do
21 with your working file?

22 A. I do nothing with the file. The staff in my
23 office takes care of all of that.

24 Q. Thank you. Have you ever used personal e-mail
25 for official Senate business?

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1 A. I do not use e-mail. To my knowledge, I do not
2 remember ever doing an e-mail to anything that was
3 official business. I probably have sent maybe ten
4 e-mails in the last ten years but that was done by staff
5 with their assistance. But I have no knowledge that
6 anything was -- any of those e-mails had to do with
7 official State business.

8 Q. Understood. And your staff uses e-mail to
9 communicate with each other, correct?

10 A. I assume they do.

11 Q. Okay. Did anyone on your staff ever forward
12 you e-mails that you reviewed?

13 A. No.

14 Q. Did anyone on your staff ever print out hard
15 copies of your e-mail that you reviewed?

16 A. You're going to have to be more specific about
17 what you're asking. Are you -- do you -- the answer is
18 yes, they do print copies of e-mails, but what are you
19 referencing?

20 Q. Just general -- as a general matter, do you
21 receive hard copy printouts of e-mail if you're not
22 reviewing them on the computer?

23 A. Yes.

24 Q. Okay. And you can put that away.

25 (Exhibits 2 and 3 marked for

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1 identification.)

2 Q. (By Ms. Faransso) Senator, the court reporter
3 has handed you what have been marked as Exhibits 2 and
4 3. Have you seen these documents before?

5 A. No.

6 Q. Do these appear to be the transcripts of your
7 depositions in the Section 5 litigation?

8 MS. HALPERN: Objection, calls for
9 speculation.

10 Take a look at it.

11 A. I have not seen all of -- this particular one.
12 It appears -- it says Oral Deposition of Senator Fraser
13 on May 17th, on Exhibit 2. But I have not had time to
14 examine it.

15 Q. (By Ms. Faransso) Do you see on Exhibit 3 that
16 it says Deposition of Senator Troy Fraser on June 13th?
17 Do you recall having seen that transcript?

18 A. I have not seen this transcript, and I do not
19 see where it says that it's --

20 Q. As a general matter, do you recall reviewing
21 the transcripts of those depositions after they took
22 place at any point?

23 A. Possibly this Exhibit 2. Exhibit 3, no, I
24 don't believe I have.

25 Q. Okay. Was your deposition in the Section 5

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1 litigation truthful and accurate?

2 A. To my knowledge, it was truthful.

3 Q. So you have no reason to now believe that any
4 part of your prior testimony was inaccurate or
5 incomplete?

6 A. I have no reason to believe that anything I
7 said was inaccurate.

8 Q. Thank you. Senator, how long have you served
9 in the Texas Senate?

10 A. I was elected in 1997.

11 Q. And were you a member of the House of
12 Representatives prior to serving in the Senate?

13 A. Yes.

14 Q. When were you first elected?

15 A. In a special election in 1988.

16 Q. And you represent Senate District 24; is that
17 right?

18 A. That is correct.

19 Q. What geographic region does your district
20 cover?

21 A. Currently, we've just redrawn the seats and I
22 believe I have 19 counties now. The geographic region
23 is the center of the state.

24 Q. How many people live in your district?

25 A. In excess of 820,000.

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1 Q. Are you aware that according to the 2010
2 census, the voting age population of your district was
3 approximately 70 percent White?

4 A. I'm sorry, would you repeat that question?

5 Q. Are you aware that according to the 2010
6 census, the voting age population of your district was
7 approximately 70 percent White?

8 A. I'm sorry, I can't verify that because I
9 believe it is lower than that.

10 Q. When did you first take an interest in Voter ID
11 issues?

12 A. 2007.

13 Q. And was there any particular reason or event
14 that prompted you to take interest in those issues?

15 A. There was a bill that had been filed in the
16 Texas House and it was moving forward and I watched that
17 bill as it moved.

18 Q. Are you referring to House Bill 218?

19 A. Yes.

20 Q. Okay. Janice McCoy served as your Chief of
21 Staff at that time, correct?

22 A. Yes.

23 Q. And how long did she serve as your Chief of
24 Staff?

25 A. I believe she was employed in 1999, two years

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1 after I was elected.

2 Q. And when did she leave your employ?

3 A. Approximately October 15th of last year.

4 Q. And is that when Ms. Mathis became your current
5 Chief of Staff?

6 A. Yes.

7 Q. While Ms. McCoy was your Chief of Staff, she
8 was your primary contact person on voting ID issues; is
9 that correct?

10 A. That's correct.

11 Q. Did she handle all election-related issues for
12 you until the time she left your employment?

13 A. Yes.

14 Q. And did Ms. Mathis assume those
15 responsibilities when Ms. McCoy left your employment?

16 A. That's actually -- it's not a -- would not be
17 an accurate question because she is assuming Chief of
18 Staff because we are not having legislative activities
19 because we're not in session, but she will be assuming
20 those as they begin.

21 Q. Got it. Is there anyone else on your staff who
22 has worked on voting ID issues?

23 A. No.

24 Q. Senator, do you still serve as the Chair of the
25 Senate Committee on Natural Resources?

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1 A. Yes.

2 Q. Okay. And do you also sit on the Economic
3 Development Committee?

4 A. Yes.

5 Q. How about the Nominations Committee?

6 A. Yes.

7 Q. And State Affairs?

8 A. Yes.

9 Q. Okay. While serving as the Chair of the Senate
10 Committee on Natural Resources, have you introduced
11 legislation that has been referred to that committee?

12 A. Yes.

13 Q. What are some examples of legislation that you
14 have introduced?

15 A. That would be an extremely broad question and
16 if you held specific issues you'd like to ask me did I
17 sponsor it, I'll be glad to respond.

18 Q. But you have introduced legislation?

19 A. Yes.

20 Q. Before you introduce legislation, do you
21 consider the impact of that legislation or your
22 constituents?

23 A. Would you please repeat that question?

24 Q. As a general matter, before you introduce
25 legislation, do you consider the impact of that

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1 legislation on your constituents?

2 A. Yes.

3 Q. And do you consider the impact of the
4 legislation on Texans outside of your voting district?

5 A. Yes.

6 Q. Before you introduce legislation, do you
7 consider the impact of that legislation on the Texas
8 budget?

9 A. Yes.

10 Q. And do you consider how a bill, if enacted into
11 law, would be administered?

12 A. No.

13 Q. And why not?

14 A. The legislation -- generally, a bill that is
15 filed is the starting point of legislation, and it is
16 likely to be changed many times either in the Senate or
17 when it's sent to the House. So assuming how it would
18 be enacted and administered is getting way ahead of
19 where you are at the process, where the job is to lay
20 out a concept, allow public input and then determine at
21 that point how that bill should be adjusted in order to
22 be good public policy.

23 Q. Okay. You mentioned House Bill 218 earlier, so
24 we're going to take look at that, if I could --

25 (Exhibit 4 marked for identification.)

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1 Q. (By Ms. Faransso) Senator, you've just been
2 handed what has been marked as Exhibit 4. Do you
3 recognize this document?

4 A. No.

5 Q. I can represent to you that this is House Bill
6 218 and it's the engrossed version as recorded by the
7 House on April 24, 2007. Does it look familiar to you?

8 A. You can represent that but there's no marking
9 on the bill to show that this is engrossed by the House
10 and sent, you know. This appears to be a bill as if it
11 would be filed, but there's no document -- no markings
12 to show that it had passed the House.

13 Q. Okay. I'll represent to you that I pulled this
14 from the Texas Legislature's website and that it was
15 marked as the engrossed version of the bill dated April
16 24, 2007.

17 You sponsored this bill in the Senate; is
18 that right?

19 A. That is correct.

20 Q. Why did you decide to sponsor this bill?

21 MS. HALPERN: For the record, I'm going
22 the to object on the grounds of legislative
23 privilege. And I'm -- we're going to do in this
24 deposition what we have done in the others, which is
25 that based on the court's ruling and our understanding

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1 of the court's ruling, the witness is going to be
2 allowed to answer the question under seal. Doing so
3 does not constitute a waiver of the legislative
4 privilege. And that battle will be fought I gather at a
5 later time in your litigation. But we will be asserting
6 the legislative privilege from time to time. When he
7 goes ahead and answers your question, if appropriate,
8 we'd ask that that portion be under seal, which may
9 dictate then that the entire transcript needs to be put
10 under seal. And we've had that discussion with this
11 reporter in the past as well and that's probably
12 something that needs to be hashed out on the record
13 right now.

14 I won't go through this lengthy an
15 objection every time. I will simply object on the
16 grounds of legislative privilege. I want a continuing
17 and running objection, and I want it understood that
18 every time that we object on the grounds of legislative
19 privilege, rather than directing him not to answer, he
20 will answer with the understanding that that portion of
21 the transcript, whatever else happens to the rest of the
22 transcript, will be under seal, and you will be put to
23 whatever burdens the court deems appropriate in order to
24 use that testimony.

25 MS. FARANSSO: Understood. Does that work

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1 for counsel?

2 MS. WESTFALL: Thank you. Yes.

3 Q. (By Ms. Faransso) So, I believe the question
4 pending was why did you decide to sponsor HB 218?

5 MS. HALPERN: Do we have an agreement that
6 the entire transcript is going to be under seal? We had
7 this discussion last time.

8 MS. WESTFALL: I don't think we have an
9 agreement that the entire transcript will be under seal.
10 I think we would agree to designate as Highly
11 Confidential pursuant to ECF 105, the Protective Order,
12 whatever responses to which you object to the question
13 on the basis of legislative privilege and any testimony
14 about documents that have been produced as highly
15 confidential pursuant to the court's ruling on
16 legislative privilege. But to the extent that there is
17 examination on the public record and the questions do
18 not implicate legislative privilege, we would -- we
19 believe that those portions of the transcript should not
20 be designated under seal or highly confidential or along
21 those lines, and those should be -- the Plaintiff should
22 be able to file those publicly with the court and not
23 under seal.

24 MS. HALPERN: And we don't actually have a
25 position on that.

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1 You will have to speak for yourself,
2 Mr. Reporter, before you get put in the bind you were in
3 before. Be your own advocate, sir.

4 THE COURT REPORTER: Well, the only way I
5 can -- the only way I can do a transcript in a one-day
6 turnaround is to mark the entire transcript as highly
7 confidential and not for me to be making decisions as to
8 what is and what is not confidential.

9 MS. WESTFALL: We can certainly agree to
10 -- for purposes of just the transcript, that the counsel
11 could agree that it's not going to be all designated as
12 confidential and the counsel can at a later date make
13 that determination if there are disputes.

14 MS. HALPERN: If that's the way we're
15 going to operate, then I would ask that you make at
16 least an attempt to call out on the record whether we
17 are on -- or whether we are under seal or not under
18 seal, because otherwise, I am leaving a problem for my
19 colleagues who represent the defendants in this case to
20 debate with you what is on -- what is under seal and
21 what isn't, and that is not a fight you want to have any
22 time close to trial, so.

23 MS. WESTFALL: Certainly. I'm going to --
24 it's been my practice in deposition to -- when I'm using
25 highly confidential documents, to make that announcement

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1 on the record, and I believe counsel will be doing the
2 same here in this case.

3 MS. HALPERN: Okay.

4 THE COURT REPORTER: Can we go off the
5 record for a second?

6 (Brief discussion off the record for
7 clarification that the reporter is to mark entire
8 transcript as "Highly Confidential" and counsel will
9 later agree on which portions to de-designate.)

10 Q. (By Ms. Faransso) So, I think maybe the third
11 time's a charm. Why did you sponsor HB 218?

12 A. I want it clear that I am asserting legislative
13 privilege in answering this question. Under privilege,
14 it is understood that my answer that I'm giving is
15 disclosing thoughts about legislation and that I would
16 ask that that answer be considered as sealed --

17 Q. Thank you, Senator.

18 A. -- and I will answer your question.

19 Q. Okay.

20 A. The legislation that was sent -- passed in the
21 House, which was 218, had followed the legislation. I
22 had conversations with Betty Brown, that was the sponsor
23 of the bill, realizing she was carrying it, and once it
24 passed the House, it was referred to the -- referred to
25 Committee and I picked the bill up as the sponsor and

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1 had hearings in Committee on the bill, and then it was
2 passed out of Committee and moved forward to the Floor.

3 Q. Uh-huh. Did Skipper Wallace ask you to be the
4 Senate sponsor of the bill?

5 A. I don't remember whether Skipper Wallace, at
6 this time, asked me to carry this -- on that particular
7 question you're asking about -- so I guess my answer is,
8 on this particular 218, I don't remember if he asked me
9 to, if we had communication.

10 Q. Okay. And just for the record, who is Skipper
11 Wallace?

12 A. Skipper Wallace is one of my constituents. He
13 is a County Chairman of Lampasas, which is mid-sized
14 county, and he has served as Chairman of the County
15 Association. He's a constituent.

16 Q. And is he -- have you communicated with
17 Mr. Wallace about Voter ID issues in the past?

18 A. Because this bill has been seen -- heard three
19 different sessions, the answer is yes, because he had an
20 interest in election issues.

21 Q. Okay. Did you read House Bill 218 before you
22 decided to sponsor it?

23 A. Yes.

24 Q. And do you recall thinking that any parts of
25 that bill needed to be changed?

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1 A. That would be a privileged question because
2 you're asking about my thoughts on that, and my answer
3 is, I did read the bill and was aware of what was in the
4 bill.

5 Q. Did you think that anything in the bill needed
6 to be changed?

7 MS. HALPERN: Privilege objection.

8 A. I've answered the -- I've answered the
9 question, is that I read the bill and was aware of what
10 was in the bill and was prepared to move forward and
11 listen to the testimony in the Senate and then determine
12 what direction we should go.

13 Q. (By Ms. Faransso) Okay. Thank you. What
14 eventually happened to HB 218 in the Senate?

15 A. Senate bill 218 passed the Committee, was
16 referred to the full Senate, the bill was sent to the
17 Lieutenant Governor, it was placed in the regular order
18 of business. And I'm sorry, I do not have the date when
19 I was recognized, but I was recognized for a motion to
20 suspend the regular order of business to take up and
21 consider House Bill 218. That motion failed and the
22 regular order of business was not suspended.

23 Q. So HB 218 did not pass the Senate then; is that
24 correct?

25 A. Senate Bill 218 was never brought before the

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1 Texas Senate. The motion to suspend failed.

2 Q. Understood. And so no Voter ID bill was
3 enacted in 2007?

4 A. House Bill 218 passed the Texas House, it
5 passed a Committee in the Senate, it was brought to the
6 Floor and the bill was failed to suspend in order to
7 bring before the Texas Senate.

8 Q. Right. And so that means that no Voter ID bill
9 passed into legislation in Texas in 2007; is that right?

10 A. House Bill 218 passed the Texas House. 218 was
11 referred to the Senate. 218 passed the Senate
12 Committee. 218 was referred to the Floor. I was
13 recognized on a motion to suspend the regular order of
14 business in order to take up and consider 218. I made
15 that motion and that motion failed to pass.

16 Q. Thank you for your testimony. Did any Voter ID
17 bill become law in Texas in 2007?

18 A. No Voter ID was signed into law by the
19 Governor.

20 Q. Okay. I'd like to just ask a few questions
21 about HB 218 itself. If you could turn to Page 9 of the
22 exhibit. And there is a list of permissible forms of ID
23 there that continues onto Page 10, if you'd like to take
24 a moment to review that list.

25 And in the interest of time, I will

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1 represent to you that HB 218 permitted the use of
2 various forms of photo ID and non-photo ID as a means of
3 verifying identity at the polls. Is it fair to say that
4 a voter who did not have a permitted form of photo ID
5 under HB 218 --

6 A. I'm sorry, could you stop, you lost me. If you
7 would -- I hate to interrupt you, but I didn't hear the
8 last two sentences you said. If you would start all
9 over, please.

10 Q. Sure. Is it fair to say that a voter who did
11 not have one of the permitted forms of photo ID in HB
12 218 could verify their identity at the polls using two
13 forms of non-photo identifications?

14 A. I'd like for you to please rephrase the
15 question and go slower. I'm still having trouble
16 following you.

17 Q. Okay. Is it fair to say that if a voter did
18 not have one of the permitted forms of photo
19 identification listed here in HB 218, they could use two
20 forms of non-photo identification also listed here in HB
21 218 to verify their identity at the polls?

22 A. You're using speculation that 218 as it was
23 filed in the Senate would have become law and that would
24 have been the parameters of the bill. So the answer to
25 your question would be no because a bill generally is

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1 changed in the process and could be amended.

2 Q. Is it fair to say that this version of HB 218
3 as drafted would have permitted a voter to use two forms
4 of non-photo identification to verify their identity at
5 the poll?

6 MS. HALPERN: Objection, the document
7 speaks for itself.

8 A. And my answer would be that the bill as it came
9 over from the House, the document is -- it speaks for
10 itself as the parameters of the bill.

11 Q. (By Ms. Faransso) But would you agree, looking
12 at Page 10, Section B, which is about two-thirds of the
13 way down the page, that there is a list of acceptable
14 identification that includes non-photo ID?

15 A. The bill speaks for itself.

16 Q. Who determined which IDs to include or exclude
17 under HB 218?

18 A. You're asking me to speculate who put these in,
19 and I'm not -- I don't have that information.

20 Q. Okay. And I'm -- just to be clear, I'm simply
21 asking if you know. So if you don't know, you can just
22 say that you don't know.

23 Did you speak with anyone before deciding
24 to sponsor this bill? So anyone in the House before
25 deciding to sponsor this bill?

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1 MS. HALPERN: I'm going to object on the
2 basis of legislative privilege with the understanding
3 that this witness will answer your question under seal.

4 A. And I'm asserting privilege, legislative
5 privilege on this, but I'm going to answer. I've stated
6 earlier in the deposition that I did have a conversation
7 with Representative Betty Brown, recognizing that it's
8 been seven years since we had that, and to my knowledge,
9 that is the only person I remember having a conversation
10 with.

11 Q. (By Ms. Faransso) Thank you. Did you conduct
12 any analysis or did anyone in your office conduct any
13 analysis about this bill before deciding to sponsor it
14 in the Senate?

15 MS. HALPERN: Objection, vague.

16 MS. FARANSSO: I'll rephrase.

17 Q. (By Ms. Faransso) Did you conduct any analysis
18 regarding the impact of this bill on your constituents
19 if in fact it was passed into law?

20 A. The makeup of -- or the way legislation works
21 in Texas is, we do not have a budget in order to conduct
22 research on a legislative issue. And it is customary
23 that we file a bill and the research is done as the bill
24 moves along in the form of public input. That we --
25 legislators are not allowed -- or we are not given a

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1 budget in order to conduct research, and the research on
2 a bill normally will happen during the process of either
3 testimony in the Committee and/or testimony on the Floor
4 from other legislators.

5 Q. So as the bill moved on, as you mentioned, are
6 you aware of any analysis that was done regarding the
7 impact of this bill on voters in Texas?

8 A. Again --

9 MS. HALPERN: I'm going to object again as
10 vague. And if you want many me to clarify the objection
11 for you, I can.

12 MS. FARANSSO: Please.

13 MS. HALPERN: The word "analysis" -- I
14 mean, the word "analysis" can mean anything from, you
15 know, hiring a researcher someplace to go to do a
16 two-million-dollar study, to looking at something and
17 thinking about it. I don't understand what you -- what
18 you mean by the word analysis, and I'm not sure that
19 this witness understands what you mean by the word
20 analysis. You've used it in a lot of these depositions
21 and nobody really knows what you mean by it.

22 MS. WESTFALL: I object to a speaking
23 objection.

24 MS. HALPERN: All right.

25 Q. (By Ms. Faransso) Senator Fraser, I would ask,

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1 when I use a word like "analysis," that you indulge me
2 and interpret it broadly to encompass anything that you
3 would consider to be analysis, such as studies and
4 research on a bill. And if you'd like to me clarify
5 further with respect to specific questions, please let
6 me know and I will try to do that.

7 A. And my answer to this is that --

8 MS. HALPERN: There's no question.

9 A. Oh, there's --

10 MS. HALPERN: No. She's got to ask you a
11 question.

12 Q. (By Ms. Faransso) So I will just ask again if
13 you were aware of any analysis that was done as the bill
14 moved along in the Senate regarding its impact on voters
15 in Texas?

16 MS. HALPERN: Same objection.

17 You can answer if you can.

18 A. And I will answer that the word of "analysis,"
19 you're being vague and it could be very broad. And that
20 in an analysis of the bill, I consider the process of
21 both reading the bill, taking testimony, and hearing
22 input from the public and other legislators as analysis,
23 so my answer would be yes, we conduct analysis but it is
24 in the form I just described.

25 Q. (By Ms. Faransso) Do you recall any particular

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1 analysis and can you give me examples of the analysis
2 that was done with respect to this bill?

3 A. I believe I've of just answered that question,
4 is that when the bill was filed, we took testimony, and
5 we had a lot of testimony from both sides on the bill
6 and that served as an analysis and input on the
7 bill. And had 218 come before the Texas Senate, I
8 believe I would have had input from both the opponents,
9 you know, the opponents and also the people that were in
10 favor of the bill, we would have had additional input.

11 Q. Understood. Did any of that testimony that you
12 mentioned pertain to how many Texas voters possessed the
13 forms of ID in HB 218?

14 A. Once again, I'll make you aware of the fact
15 that that was seven years ago. But to my knowledge,
16 there was just questions of projecting possibly what
17 would have been, but Texas had no ability to project
18 because those records were not kept.

19 Q. Senator, what was the purpose of HB 218?

20 A. Now you're asking --

21 MS. HALPERN: No, you can answer that one.

22 A. The purpose of 218 was to protect the integrity
23 of the ballot box.

24 Q. (By Ms. Faransso) And was the integrity -- was
25 the ballot box lacking in integrity at that time?

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1 A. We understood very clearly that under current
2 Texas law, we did not possess the tools to determine
3 that a person was who they said they were when they
4 reported to come to the ballot box.

5 Q. And so HB 218 intended to deter fraud at the
6 ballot box then?

7 A. House Bill 218 was a first step moving toward
8 trying to protect the integrity of the ballot box.

9 Q. And was that specifically with respect to
10 in-person fraud at the ballot box?

11 A. The only issue that House Bill 218 attempted to
12 address was in-person voting.

13 Q. Understood. You mentioned that you did not
14 believe that Texas had the tools to protect the ballot
15 box at that time. At that time in the state of Texas,
16 voter fraud was subject to criminal penalties; is that
17 right?

18 A. Yes.

19 Q. And what was your factual basis for believing
20 that those penalties were not sufficient to deter fraud
21 at the ballot box?

22 A. Because of testimony we had on the bill and
23 input from both the public election officials and other
24 State officials, we realized that we did not have
25 current tools available in order to stop someone that

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1 was voting illegally.

2 Q. And what was your factual -- what was the
3 factual basis for your belief that in-person voter fraud
4 was occurring in Texas?

5 A. Texas at the time before the passage of our
6 Voter ID bill, did not have sufficient tools to identify
7 when a person was voting illegally.

8 Q. So then did you have any actual evidence of
9 voter fraud having taken place at the polls?

10 A. Before the passage of these bills, Texas did
11 not have current -- or tools available to identify when
12 a person was voting illegally.

13 Q. So your testimony is that there did not exist
14 any evidence of fraud having taken place at the polls?

15 MS. HALPERN: Objection, misstatements his
16 testimony.

17 A. You're trying to answer for me and my answer
18 continues to be, Texas does not -- did not -- prior to
19 passage of the photo ID bill, did not have tools
20 available to identify when someone was voting illegally.

21 Q. (By Ms. Faransso) Do you recall having heard of
22 any specific incidents of fraud at that time?

23 A. Yes.

24 Q. Can you tell me what those specific incidents
25 were?

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1 A. Again, you're asking for me to recall specific
2 information that was in testimony seven years ago, but I
3 cannot give you the specifics other than we had
4 testimony from numerous witnesses, many that were
5 election officials that had identified people attempting
6 to -- to vote illegally that they were not able to stop.
7 We had other testimony that I've seen of -- of charges
8 that were filed by the Attorney General, where people --
9 there were persons that were deceased that continued to
10 vote after they were deceased, and we had other reports
11 of people that were convicted of voting more than one
12 time on election day.

13 Q. And let me just ask a couple of questions about
14 your testimony. You mentioned convictions and
15 prosecutions for individuals who had voted for deceased
16 individuals. Was that in-person voter fraud or was that
17 pertaining to mail-in voter fraud?

18 A. Once again, that was seven years ago, and I
19 know that we had testimony of that, but I'm sorry, I
20 could not verify whether it was in-person or mail-in.

21 Q. And I appreciate that it was seven years ago
22 and I know that was a long time. Let me ask a more
23 general question: Do you recall any convictions based
24 on the incidents of fraud that you heard of in 2007?

25 A. Once again, I'll remind you that was seven

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1 years ago, and I am -- remember testimony of this;
2 whether they were convicted or not, I do not have
3 information.

4 Q. Thank you. Do you recall hearing of any
5 incidents that were not on the public record in the
6 testimony that you have mentioned?

7 A. Rephrase your question.

8 Q. Do you recall hearing of any incidents of voter
9 fraud that were not on the public record in testimony
10 that you heard in considering HB 218?

11 A. Once again, that was seven years ago, but to my
12 knowledge, I believe most of the testimony would likely
13 have been on the record.

14 Q. Did you believe that HB 218 as drafted would
15 have been effective in combating in-person voter fraud?

16 A. May I speak to my counsel?

17 THE WITNESS: This is not privileged?

18 MS. HALPERN: Well, it is. All right, we
19 object on the basis of legislative privilege.

20 And with that, and all of the explanation
21 that goes with that, you can answer.

22 And this answer should be sealed.

23 A. Would repeat the question.

24 Q. (By Ms. Faransso) At the time that HB 218 was
25 being considered, did you believe that HB 218 as drafted

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1 would have been effective at combating in-person voter
2 fraud?

3 A. I claim privilege on thoughts involving
4 legislation and I ask this to be under seal. The answer
5 is, I believe that 218 was a first step toward ensuring
6 the integrity of the ballot box.

7 Q. I'd like to move ahead to 2009.

8 (Exhibit 5 marked for identification.)

9 Q. (By Ms. Faransso) And the court reporter has
10 handed you what has been marked as Exhibit 5. Do you
11 remember recognize this document?

12 A. This appears to be Senate Bill 362 as filed in
13 2009.

14 Q. And I can represent to you that you're correct.
15 This is the as-introduced version.

16 You introduced this bill, correct?

17 A. Yes.

18 Q. When did you decide to introduce Senate Bill
19 362?

20 A. Again, I would --

21 MS. HALPERN: Objection, legislative
22 privilege.

23 You may answer.

24 A. I will assert privilege as you're asking for my
25 thoughts on legislation and I would ask it be under

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1 seal. Again, this is five years ago, and telling you
2 the exact time that I decided to carry it, the official
3 time was when I filed the bill. But I'm sure prior to
4 that, I had thoughts about picking it up and probably
5 the, you know, thoughts I had were continued from the
6 time of the prior session until this. So there had been
7 multiple thoughts but the official time of the decision
8 I'm assuming would be when I filed the bill.

9 Q. (By Ms. Faransso) Okay. Why did you decide to
10 file Senate Bill 362?

11 MS. HALPERN: Objection on the grounds of
12 legislative privilege.

13 You may answer with the understanding that
14 the answer will be under seal. Can go ahead and answer.

15 A. I claim privilege. I filed 362 in order -- as
16 far as a good first step of ensuring the integrity of
17 the ballot box.

18 Q. (By Ms. Faransso) And was SB 362 designed to
19 combat in-person voter fraud only?

20 A. 362 only addressed in-person voting fraud.

21 Q. Thank you. Did anyone ask you to introduce
22 this bill?

23 MS. HALPERN: Objection on the grounds of
24 legislative privilege.

25 You may answer with the understanding that

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1 the answer will be under seal until a later
2 determination is made.

3 A. And I would claim privilege in answering. The
4 -- I think my answer to your question will be no, I was
5 not asked by anyone to carry it.

6 Q. (By Ms. Faransso) Did you promise anyone that
7 you would introduce the bill?

8 A. I did not promise anyone that I would carry the
9 bill.

10 Q. Do you recall having conversations with Skipper
11 Wallace about the bill?

12 A. Once again, this was five to six years ago and
13 I cannot remember specific conversations, but I believe
14 that Skipper Wallace and I did discuss and I think he
15 actually he asked the question, "Are you going to carry
16 the Voter ID bill?" And my answer was, "Yes."

17 Q. Okay. Did you have communications with any
18 other legislators before filing Senate Bill 632?

19 MS. HALPERN: You can answer that yes or
20 no.

21 A. No.

22 Q. (By Ms. Faransso) So unlike House Bill 218, you
23 were the author of this bill; is that right?

24 A. Yes.

25 Q. So you controlled the draft of the bill?

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1 A. This specific bill, I did.

2 Q. Senate Bill 362 was modeled after HB 218; is
3 that right?

4 A. It was substantially the same.

5 Q. Did you consider making any changes to Senate
6 Bill 362? Changes from the version that was HB 218?

7 A. Yes.

8 Q. What changes did you consider?

9 MS. HALPERN: I'm going to object on
10 grounds of legislative privilege and ask that the answer
11 that follows be placed under seal.

12 MS. WESTFALL: Counsel, can we -- is there
13 a way to streamline these objections?

14 MS. HALPERN: I'm trying.

15 MS. WESTFALL: Both the witness -- both --
16 the witness who does not need to make objections, and I
17 think you understand -- you appear to understand his
18 concerns about legislative privilege. Is there any way
19 -- because this is breaking up the flow of questioning.
20 I object to that.

21 MS. HALPERN: All right.

22 As long as I object, you don't have to.
23 So I have now objected so you can go ahead and answer
24 under seal.

25 MS. WESTFALL: You can have a standing

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1 objection if you assert legislative privilege, it will
2 be under seal, and then with your assertion, we can
3 agree to that.

4 MS. HALPERN: We can streamline to that
5 extent. To the extent that the entire transcript is not
6 being placed under seal, you have put me in the position
7 of having to make sure that I object to every single
8 question and if she's got a question aligned with 20
9 questions in it, I have to object 20 times. You have
10 done that by not agreeing to put the whole transcript
11 under seal. So I'm happy to just say "objection,
12 legislative privilege" as long as it's understood, you
13 and the court reporter understands that means it's going
14 under seal. And anybody who reads this transcript
15 understands that when we say -- when I say "objection,
16 legislative privilege," the question -- the answer that
17 follows is going under seal, and if we can have that
18 understanding --

19 MS. WESTFALL: I can agree to that.

20 MS. HALPERN: All right.

21 MS. FARANSSO: I consent. Thank you.

22 THE COURT REPORTER: I'm going off the
23 record a second to clarify. My understanding is that
24 tonight I'm putting the entire transcript under seal and
25 marking it "Highly Confidential."

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1 MS. WESTFALL: You are.

2 MS. FARANSSO: You are.

3 MS. HALPERN: You are. And let's have
4 this conversation on the record if you don't mind.

5 THE COURT REPORTER: Okay.

6 MS. HALPERN: Instead of off.

7 THE COURT REPORTER: Okay.

8 THE WITNESS: And I want a point of
9 clarification as the witness, that I'm the one answering
10 the questions, you're asking me the questions, and if
11 I'm asserting privilege, I want it clear that if my
12 attorney asserts privilege, she is in fact answering for
13 me and it is clear that I have -- or am asserting
14 privilege; is that clear?

15 MS. FARANSSO: That's clear.

16 MS. HALPERN: It is clear.

17 MS. WESTFALL: That's clear.

18 MS. HALPERN: That's normal.

19 THE WITNESS: So anytime that we're
20 asserting privilege -- if she has asserted privilege, I
21 do not have to repeat it.

22 MS. FARANSSO: Right.

23 MS. WESTFALL: Yes.

24 THE WITNESS: And you realize the rules --
25 those rules are very different than the depositions

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1 prior to this?

2 MS. WESTFALL: Yes.

3 THE WITNESS: And that is the
4 understanding, and it's not a problem?

5 MS. WESTFALL: Yes.

6 THE WITNESS: Okay.

7 Q. (By Ms. Faransso) Okay. I believe we were
8 discussing what changes you considered making to HB 218
9 before you decided to file Senate Bill 362. Can you
10 tell me what those changes were?

11 MS. HALPERN: Objection, legislative
12 privilege.

13 Go ahead.

14 A. 218, as it was sent over from the House and
15 became the model for 362, we considered a good starting
16 point for the legislation. There were numerous things
17 in the bill that I was uncomfortable with and that hoped
18 would be changed in the process.

19 Q. (By Ms. Faransso) Do you recall any of the
20 things that you were uncomfortable with that you wanted
21 to change?

22 A. Yes.

23 Q. Can you tell what those were?

24 MS. HALPERN: Objection, legislative
25 privilege.

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1 A. I'm free to answer?

2 MS. HALPERN: Yes, under seal.

3 A. The 362 as filed was not a clear photo ID bill,
4 which was my goal to pass, and so I was uncomfortable
5 with the fact that it was not a full photo ID bill.

6 Q. (By Ms. Faransso) What do you mean when you say
7 it was not a full photo ID bill?

8 A. There were provisions in the bill that allowed
9 someone to show identification that was not a clear
10 photo identification in order to vote.

11 Q. But to be clear, the version of the bill that
12 you filed did include non-photo identification?

13 A. That is clear.

14 Q. Okay. What was the purpose of Senate Bill 362?

15 A. To ensure the integrity of the ballot box.

16 Q. And so the purpose of Senate Bill 362 was to
17 ensure the integrity of the ballot box by deterring
18 in-person fraud; is that right?

19 A. Are you attempting to answer the question for
20 me?

21 Q. No, I'm simply clarifying that when you say
22 that the purpose was to protect the integrity of the
23 ballot box, it was to do that via deterring in-person
24 voter fraud, correct?

25 A. If you would like to answer -- ask me a

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1 question that is clear, I'll be glad to answer, but you
2 attempted to answer the question for me.

3 Q. Senate Bill 362 was intended to prevent
4 in-person voter fraud; is that correct?

5 A. Yes.

6 Q. Okay.

7 Is now a good time for a break for you?

8 A. I would love a break.

9 (Recess from 10:02 a.m. to 10:15 a.m.)

10 (Exhibit 6 marked for identification.)

11 Q. (By Ms. Faransso) Senator, you've just been
12 handed what has been marked as Exhibit 6. Do you
13 recognize this document?

14 A. It appears to be a press release from my
15 office.

16 Q. And I can direct you to the second page, if you
17 look about three full paragraphs down, do you see that
18 this press release is about Senate Bill 362?

19 A. I'm sorry, help me, where are you --

20 Q. Sure. So I'm looking on the second page.

21 A. I'm sorry, wait, wait, is this the back side?

22 Q. Yes, the back side.

23 A. Second page is referring to the back side?

24 Q. Back side, yes --

25 MS. HALPERN: Counsel, let me enter an

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1 objection or at least a clarification for the record,
2 first of all, that the document is marked highly
3 confidential.

4 MS. FARANSSO: I'm sorry, I --

5 MS. HALPERN: So this questioning needs to
6 be under seal for that reason. Second of all, it
7 appears to be two documents stapled together.

8 MS. FARANSSO: Right, and I will get to
9 that.

10 MS. HALPERN: Two distinct documents --

11 MS. FARANSSO: Yeah.

12 MS. HALPERN: -- stapled together.

13 MS. FARANSSO: I apologize for not noting
14 that it was highly confidential.

15 Q. (By Ms. Faransso) So, first, Senator, if you
16 look in the third full paragraph, you see that --

17 A. Could I stop you? I'm sorry, I'm confused.
18 I'm having the same problem following this. You -- you
19 have two different press releases that appears. Do you
20 have the time line of when these were released?

21 Q. So I was about to get to that, but it appears
22 that these were produced as one document. If you look
23 at the Bates number in the lower right corner, it's
24 continuous numbering. So you would know better than me,
25 actually, if these were versions of each other or

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1 successive press releases. But I can ask you, do you
2 recall drafting these two documents?

3 A. Can I -- I'm sorry, I'm going to disagree with
4 you. The number on the bottom is a LEG counsel number.
5 It would have been drafted by lawyers and legislative
6 counsel. So if this came from my office, it would not
7 have had a stamp on the bottom, so, I'm sorry, I can't
8 verify that this -- what this document is.

9 (Sotto voce discussion.)

10 A. I don't --

11 Q. (By Ms. Faransso) That's a Bates stamp,
12 Senator. Do you see on the first page of the document,
13 the title of the document is, "Voter ID is good for
14 Texas," by Senator Troy Fraser?

15 A. Yes.

16 Q. Do you recall drafting this document?

17 A. I don't draft documents.

18 Q. Do you recall reviewing this document?

19 A. Once again, if you will give me the time line
20 of when this happened, maybe you can refresh my memory.
21 The answer right now is no, I don't remember drafting
22 this.

23 Q. Would you agree that this document pertains to
24 Senate Bill 362?

25 A. You have made a reference to that, but I'm

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1 still not seeing it.

2 Q. It is on the second page in the third full
3 paragraph.

4 A. I see that.

5 Q. Do you know who would have drafted this
6 document for you?

7 A. Most of my press at this time was drafted by my
8 chief of staff, Janice McCoy.

9 Q. Would you have reviewed what she drafted and
10 put your name on as the author?

11 A. Yes.

12 Q. I just want to ask you a few questions about
13 the document. And I realize that you may not remember
14 it, but if you do recall it, please let me know. And
15 otherwise, I'll just ask you if you agree with the
16 statements, and we can move on. If you look at the
17 second paragraph on the first page, and I will read you
18 the paragraph. "But unfortunately, someone undermined
19 our fundamental rights. Consider, for example, the
20 Beeville woman who was convicted of voting for her dead
21 mother, and the Corpus Christi suspect who was charged
22 with the felony for stepping in front of an elderly
23 couple who she claimed to be helping at the polls and
24 illegally casting their ballots, or the former city
25 council woman who was sentenced to five years in prison

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1 after illegally registering noncitizens to vote."

2 I just want to ask you a couple questions
3 about this paragraph. First of all, do you recall
4 having read or reviewed this paragraph in the past?

5 A. I recognize these as issues that I have seen in
6 the past, yes.

7 Q. Okay. And as we discussed earlier, Senate Bill
8 362 was intended to deter in-person voter fraud,
9 correct?

10 A. Yes.

11 Q. The first example in this paragraph, the
12 Beeville woman who was convicted for voting for her dead
13 mother, that was a case of mail-in voter fraud; is that
14 correct?

15 A. I'm sorry?

16 Q. That was a correct -- that was an incident of
17 mail-in ballot fraud; is that correct?

18 A. I have no -- no way to know that. If you have
19 information, something you'd like me to look at, I'd be
20 glad to look at it, but I don't.

21 Q. In the second example, the Corpus Christi
22 suspect who was charged with a felony for stepping in
23 front of an elderly couple, that case did not involve an
24 attempt at voter impersonation, did it?

25 A. Once again, you're answering the question for

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1 me. I have no reason -- no way of knowing.

2 Q. Well, Senator, if you just look at the actual
3 words themselves, "the suspect stepped in front of an
4 elderly couple," that would not be a case of voter
5 impersonation, would it?

6 A. Once again, if you have something you'd like to
7 show me to have me verify. The words say that they
8 illegally cast their ballot.

9 Q. On the third example, the former city council
10 woman who was sentenced to five years in prison after
11 illegally registering noncitizens to vote, that involved
12 a case of voter registration fraud, not in-person voter
13 fraud; is that right?

14 A. The sentence obviously says she was convicted
15 of registering, but if someone is registering, it was
16 implied that they planned to vote.

17 Q. But this particular case was about voter
18 registration fraud; is that right?

19 A. If you would like to -- to show me something
20 that that is the case, the only thing I see is the words
21 on the paper that says that they were convicted of that.

22 Q. Do you recall any factual basis beyond these
23 three examples demonstrating that voter fraud, in-person
24 voter fraud existed in Texas at that time?

25 MS. HALPERN: Objection, harassing the

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1 witness. You can answer if you can.

2 A. Once again, this is, in this case, probably
3 five to six years ago, and the bulk of the information I
4 had, had either come from charges that were filed by the
5 Attorney General and/or testimony they had received from
6 either the public and/or other legislators.

7 Q. (By Ms. Faransso) But all of that testimony
8 and all of the evidence of which you were aware was on
9 the public record, correct?

10 A. I previously answered that question that said,
11 to my knowledge, most of the things that I remember were
12 public record.

13 Q. Were there any purposes of Senate Bill 362 that
14 were not disclosed on the public record?

15 A. There were no -- the bill spoke for itself.
16 The intent of the bill was to preserve the integrity of
17 the ballot box.

18 Q. Will you turn back to -- and I believe it was
19 Exhibit 5, which was Senate Bill 362 itself. And if you
20 turn to page 5 of that bill, Senate Bill 362 allowed the
21 use of both photo and nonphoto ID, correct?

22 A. Yes.

23 Q. Did you discuss the inclusion of nonphoto ID in
24 Senate Bill 362 with anyone?

25 A. Please rephrase your question.

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1 Q. Did you discuss the inclusion of nonphoto ID in
2 Senate Bill 362 with anyone?

3 MS. HALPERN: You can answer "yes" or
4 "no."

5 A. I'm sorry, I'm missing -- ask the question
6 again, please.

7 MS. FARANSSO: Can you please read it
8 back?

9 (Question read back by the court
10 reporter.)

11 A. Yes.

12 Q. (By Ms. Faransso) With whom?

13 MS. HALPERN: Objection, legislative
14 privilege. You may answer under seal.

15 A. The discussion on that would have likely been
16 with my chief of staff, Janice McCoy.

17 Q. (By Ms. Faransso) And what was nature of those
18 conversations?

19 MS. HALPERN: Objection, legislative
20 privilege. You may answer under seal.

21 A. The conversation throughout the entirety of 218
22 and 362 were that we thought it was a good starting
23 point for the bill, but it did not do what we intended
24 to do, and you know, we -- our preference would have
25 been to have a full photo ID bill, photo ID.

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1 Q. (By Ms. Faransso) But you believed at the time
2 that this set of IDs, which included nonphoto IDs, would
3 have prevented in-person voter fraud; is that right?

4 A. You're answering and trying to say that I
5 believe that. That -- I think I've answered that the
6 bill was a good starting point for the process. But my
7 preference would have been to have a full photo ID.

8 Q. Did you believe that the set of IDs included in
9 Senate Bill 362 would prevent in-person voter fraud?

10 A. I believe it was a good first step moving
11 toward eliminating voter fraud.

12 Q. Did you view the inclusion of nonphoto ID as an
13 important feature of the legislation?

14 MS. HALPERN: Objection, legislative
15 privilege.

16 A. And I'm going to have to ask you to ask the
17 question again.

18 MS. FARANSSO: Can you please read it
19 back?

20 (Requested portion was read back by the
21 court reporter.)

22 A. I did not view it in any way. That was put
23 into the bill in the Texas House. It was included in
24 the bill, so I didn't include it in. We filed the bill
25 substantially as it had passed the House as a starting

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1 point of discussion.

2 Q. (By Ms. Faransso) If you don't mind, could you
3 look back at Exhibit 6, please? And turn to that second
4 page, that back page, the back of the first page there.
5 And if you look at the third paragraph of that page,
6 which is the second full paragraph, it reads, "So I'm
7 offering Texas voters new protections that will prevent
8 fraud at the ballot box. But importantly, the
9 legislation I filed will not send anyone away from the
10 polling place without being able to cast their ballot.
11 Senate Bill 362 will require voters to show either one
12 form of photo identification or two other forms of
13 nonphoto identification. The nonphoto identification
14 can be a utility bill, mail from a government entity or
15 even a library card. And voters who cannot produce
16 acceptable forms of identification will still be allowed
17 to cast a provisional ballot. So despite all the
18 rhetoric some might hear from the opposition, let me be
19 clear: No eligible voter will walk away from a polling
20 location without being able to cast their ballot." Do
21 you recall this text?

22 A. Yes.

23 Q. Did you agree with these statements at the
24 time?

25 A. Yes.

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1 Q. Did you believe that it was an important
2 feature of Senate Bill 362 that nonphoto ID was included
3 in the bill?

4 A. I believed that --

5 MS. HALPERN: Objection, legislative
6 privilege.

7 A. I believed that this was a good starting point
8 for discussion on the bill.

9 Q. (By Ms. Faransso) But you believed that the
10 inclusion of nonphoto identification would mean that no
11 one would be sent away from the polling place without
12 being able to cast their ballot; is that right?

13 MS. HALPERN: Objection, assumes facts not
14 in evidence.

15 A. No, that's not -- you're -- you're answering
16 the question for me. If you'd like to restate, I'll
17 answer.

18 Q. (By Ms. Faransso) Do you believe that the
19 inclusion of nonphoto ID in Senate Bill 362 would mean
20 that no one would be sent away from the polling place
21 without being able to cast their ballot?

22 MS. HALPERN: Objection, compound.

23 A. You're asking multiple questions.

24 Q. (By Ms. Faransso) Senator, I'm actually
25 quoting from this press release. I'm simply asking if

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1 you agreed with the sentence in the very first paragraph
2 I read.

3 A. You're -- you're -- you're compounding two
4 thoughts into one. The question I believe you're
5 answering is about someone being cast away from the
6 ballot box. And in every bill, I believe, from 218, 362
7 and 14, we had the ability to cast a provisional ballot
8 to -- if there was a contradiction about that, they
9 would be allowed to cast a provisional. And there was a
10 methodology for making that ballot be a permanent vote.
11 So the answer to your question is -- and I say, "and
12 voters can produce acceptable forms of identification
13 and will still be allowed to cast a provisional ballot,"
14 that kept them from leaving the ballot box without
15 voting.

16 Q. And thank you for your testimony. Senate Bill
17 362 was also designed to allow the presentation of
18 nonphoto ID, correct?

19 A. I'm sorry, you're going to have to ask that
20 again, because I think you're trying to answer the
21 question for me.

22 Q. A voter who did not have a form of photo ID
23 could have shown two forms of nonphoto and casted their
24 ballot in that way; is that right?

25 A. As 362 was filed in the Texas Senate, yes, that

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1 would have been the case.

2 Q. Okay. Senator, do you recall that House Bill
3 218, I'm making you go back seven years now, included a
4 provision permitting the use of student IDs as an
5 acceptable form of identification?

6 A. Would you please show me where in the bill it
7 says that?

8 Q. Sure. That was Exhibit 4. And if you turn
9 to --

10 A. Page 10?

11 Q. Yeah, page 10, thank you.

12 A. Paragraph 6.

13 Q. Thank you, Paragraph 6. Do you see that HB 218
14 included student ID as an acceptable form of
15 identification?

16 A. Yes.

17 Q. And Senate Bill 362, going back to Exhibit 6,
18 does not include student ID as a form of identification;
19 is that right?

20 A. I do believe 362 as filed does not have it.

21 Q. Okay. Do you recall testifying in the
22 Committee of the Whole on Senate Bill 362, that Senate
23 Bill 362 still did permit the use of student IDs?

24 A. Would you please repeat your question?

25 MS. FARANSSO: Can you read it back,

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1 please?

2 (Requested portion was read back by the
3 court reporter.)

4 A. Okay. I'm asking you a time line. When you're
5 saying Committee of the Whole, when are you suggesting
6 that I made this testimony?

7 Q. I'm suggesting the Committee of the Whole
8 debate that took place in March of 2009, specifically
9 March 10th, 2009. I can show you the testimony if that
10 would help.

11 A. I would like that, yes.

12 Q. Sure.

13 A. And I'm sorry, I'm trying to remember the --
14 because we have three different bills, I'm trying to
15 filter which bill we're talking about.

16 (Exhibit 7 marked for identification.)

17 Q. (By Ms. Faransso) Do you recognize this
18 document?

19 A. No.

20 Q. I can represent to you that this is the
21 transcript -- an excerpted transcript from the Committee
22 of the Whole that took place on March 10, 2009. And if
23 you turn to page 115, which is just a couple of pages
24 in, the page number on the upper right. And I believe
25 it's a discussion between you and Senator Zaffirini.

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1 Did I pronounce that correctly?

2 A. Zaffirini is correct.

3 Q. Okay. And Senator Zaffirini is asking you
4 about the fact that student IDs are not included in the
5 2009 bill, in Senate Bill 62. And at the bottom of that
6 page, you respond, "Just a second, the reference you're
7 making is the public institutions of higher learning.
8 The student ID card is still included. The wording
9 changed, but it's covered by Number 6A." And if you go
10 to 6A, back in your version of Senate Bill 362, it
11 reads, "A valid identification card that contains the
12 person's photograph and is issued by an agency or
13 institution of the federal government or an agency,
14 institution or political subdivision of this state."
15 Did you agree at the time that this language in 6A
16 permitted the use of student identification cards as an
17 acceptable form of identification for verifying one's
18 identity at the ballot box?

19 A. I agreed that the words say that a valid
20 identification card that contains a person's photograph
21 and is issued by an agency or institution of the federal
22 government or an agency, institution of a political
23 subdivision of the state.

24 Q. Do you agree that those words encompass student
25 identification issued by a public university in Texas?

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1 A. I can't agree to that because I'm -- I'm not
2 sure of the interpretation.

3 Q. I can refresh your recollection if you don't
4 mind turning back to the transcript.

5 A. Okay.

6 Q. And following the testimony -- the testimony
7 that I just read, Senator Zaffirini responded, "So
8 you're saying that, on Page 6, beginning at Line 8,
9 where it reads a valid identification card that contains
10 the person's photograph and is issued by, (a), an agency
11 or institution of the federal government, or (b), an
12 agency, institution or political subdivision of this
13 state, you're saying that would include institutions of
14 higher education, and that, therefore, student
15 identification cards would be acceptable proof of
16 identification?"

17 A. I'm sorry, I'm going to have to interrupt you.
18 You're going so fast, I can't --

19 Q. Okay.

20 A. -- follow what you're saying. If you want to
21 start all over and explain where -- point out the line
22 that you're -- you're addressing.

23 Q. Certainly.

24 A. I'm -- I have a lot of trouble following your
25 voice when you speak so fast.

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1 Q. Sure. I was reading at Line 25 of page 115.

2 A. Okay. One second, 115, line 25. So you're
3 saying that, okay.

4 Q. Senator Zaffirini says to you --

5 MS. HALPERN: Counsel, maybe it would be
6 better if you just let him read it himself and then ask
7 the question.

8 MS. FARANSSO: Okay, sure.

9 MS. HALPERN: The pages aren't
10 consecutive, so when you turn the page, you're already
11 someplace else.

12 Q. (By Ms. Faransso) Senator, you only need to
13 read through page 116.

14 A. Okay.

15 Q. So did you respond yes to Senator Zaffirini's
16 question of whether Paragraph 6A of Senate Bill 362
17 would include student identification from a public
18 university?

19 A. It appears that I did answer yes at Line 19.

20 Q. Thank you. Are you familiar with the Supreme
21 Court's decision in Crawford versus Marion County
22 election board?

23 A. Could you clarify a little. The answer, I
24 believe I am, but you -- is this the Supreme Court
25 decision of what state?

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1 Q. The Indiana photo ID law.

2 A. Okay. The answer is "yes."

3 Q. Okay. Do you recall when that decision was
4 issued?

5 A. I do not have the specific date, but I believe
6 it was prior to us laying out the bill in 2007. My
7 recollection is 2005.

8 Q. So I'll actually submit to you that it was
9 issued in April 2008, which would have been after HB 218
10 was laid out.

11 A. Okay.

12 Q. But that would have been before Senate Bill 362
13 was laid out, correct?

14 A. Yes.

15 Q. Did you read that decision at any time prior to
16 introducing Senate Bill 362?

17 A. Yes.

18 Q. And did you discuss that decision with anybody?

19 MS. HALPERN: Yes or no.

20 A. Yes.

21 Q. (By Ms. Faransso) With whom did you discuss
22 that decision?

23 MS. HALPERN: Objection on the grounds of
24 legislative privilege.

25 A. Once again, if it was in 2008, we're talking

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1 about six years ago, my recollection would be, I would
2 assume I had discussed this with my chief of staff,
3 Janice Steffes.

4 Q. (By Ms. Faransso) I'm sorry?

5 A. With Janice -- Janice McCoy. I'm sorry, that
6 was her maiden name. Janice McCoy.

7 Q. Do you recall anything about the Indiana voter
8 ID law itself?

9 A. It's a very broad question. Would you like to
10 clarify what you're asking?

11 Q. Do you recall that that voter ID law did not
12 permit nonphoto ID?

13 A. I do not recall that now.

14 Q. Did the Crawford decision have any impact in
15 your development of Senate Bill 362?

16 A. No.

17 Q. And why not?

18 MS. HALPERN: Objection, legislative
19 privilege.

20 A. I've stated before that 362 was almost exactly
21 like the 218 that we brought forward, and we decided
22 that was a good starting point for discussion.

23 Q. (By Ms. Faransso) Before filing Senate Bill
24 362, did you analyze or direct anyone to analyze the
25 impact of that bill on your constituents?

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1 MS. HALPERN: Objection, vague.

2 A. And I'm going to ask you to answer -- ask the
3 question again.

4 MS. FARANSSO: Can you read it back?

5 (Requested portion was read back by the
6 court reporter.)

7 A. Once again, you're using the word "analyze" in
8 a very broad sense. And the answer is yes, we
9 constantly analyzed the bill and the impact on my
10 constituents.

11 Q. (By Ms. Faransso) Can you tell me what kind of
12 analysis you did to research the impact of the bill on
13 your constituents?

14 A. As I answered, we constantly analyzed the issue
15 to analyze the impact on the -- the constituents.

16 Q. In analyzing the issue, did you specifically
17 look at the impact of the bill on minority voters in
18 your district?

19 A. Again, the process in Texas, we file
20 legislation, you have testimony by the public and other
21 legislators, and through that testimony, it allows you a
22 clear analyzation of the impact.

23 Q. You served on the State Affairs Committee,
24 correct?

25 A. Yes.

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1 Q. And so I take it you're familiar with the
2 preclearance standard under Section 5 of the Voting
3 Rights Act?

4 A. Yes.

5 Q. You wanted to ensure that Texas would be able
6 to enforce Senate Bill 362 if, in fact, it was passed,
7 correct?

8 A. Yes.

9 Q. Did you anticipate that Texas was going to need
10 to provide either the Department of Justice or a federal
11 court with information about the effect of Senate Bill
12 362 on minority voters in Texas?

13 A. Would you rephrase that again? You're asking,
14 was I aware that I would be able to have to?

15 MS. FARANSSO: Could you please read the
16 question back?

17 (Requested portion was read back by the
18 court reporter.)

19 A. I was aware that all the testimony we had had
20 on the bill would be moved forward to the Department of
21 Justice, but until the bill was either precleared or
22 allowed to move forward, we would not have the election
23 information.

24 Q. (By Ms. Faransso) In considering Senate Bill
25 362, did you research who might not have the documents

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1 necessary to vote under Senate Bill 362?

2 A. Once again, you're asking for research on the
3 bill, and I've told you that we do not have the budget
4 to do the research -- you know, research and we're --
5 research -- the way we do our research in Texas is
6 through the testimony that is given on the bill. And
7 through the testimony on the bill, that information was
8 discussed.

9 Q. Do you recall specifically the testimony about
10 how many voters would not have the documents necessary
11 to vote under Senate Bill 362?

12 A. The -- most of the documentation we received
13 was actual elections from other states and the number of
14 people that would have like documentation, and that
15 testimony we had showed us that they were very, very few
16 people that would not have sufficient documentation.

17 Q. And that testimony you mentioned was about
18 other states. Do you recall specifically what states
19 those studies were about?

20 A. The -- the two studies we had actual results
21 from was Indiana and Georgia.

22 Q. Did you know the racial demographics of Indiana
23 and Georgia at the time you were considering Senate Bill
24 362?

25 A. Yes.

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1 Q. And what were those demographics?

2 A. Again, you're asking me to recall data that
3 happened seven years ago. That -- but my recollection
4 is that Indiana probably doesn't have as high a makeup
5 of minority, but the Georgia was very close to the
6 racial makeup of Texas.

7 Q. Was the population of Hispanic voters in
8 Georgia close to the population of Hispanic voters in
9 Texas?

10 A. I remind you of your definition that when we
11 started this, that you said minority voters will be
12 considered any non-White, and the non-White makeup in
13 Georgia and the non-White makeup in Texas were
14 substantially the same.

15 Q. That's correct, but for this particular
16 question, I'm just asking about Hispanic voters. Was
17 the population of Hispanic voters in Georgia as high as
18 the population of Hispanic voters in Texas?

19 A. The data that -- that we were given didn't
20 break out the difference between Hispanic or what
21 minorities would be included in Hispanic, so I don't
22 have that information.

23 Q. Okay. Senator, do you recall during the
24 Committee of the Whole debate on March 10th, stating
25 that you had done more research and more reading and

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1 more debate on this bill than maybe you had ever done
2 before?

3 A. Yes.

4 Q. When did you conduct most of your research on
5 Voter ID?

6 A. The bulk of the research was done, obviously,
7 after the filing of 218, starting there, and then
8 leading up all the way to the laying out of 362.

9 Q. And how much time did you spend on that
10 research?

11 A. More time than I've ever spent on any other
12 bill.

13 Q. Can you tell me about the sources you consulted
14 in doing that research?

15 MS. HALPERN: Objection, legislative
16 privilege. You can answer.

17 A. The starting point was the Baker Carter report,
18 was obviously the start. But I spent a lot of time
19 Googling the issue, and in Googling that we found
20 multiple studies that had been done, one by the
21 University of Missouri, was one by the Heritage
22 Foundation. There were polls that had been taken. One
23 of the polls that I had a lot of credence in was an
24 independent poll done by the University of Texas that
25 showed that if you asked someone whether they were in

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1 favor of someone showing a photo -- we actually asked --
2 had asked the question photo ID, and the -- over 80
3 percent of the people said yes, they did, and that
4 spread, you know, positively for both Republicans and
5 Democrats and for White and non-White. And there is
6 also a racial breakup on that and both African American
7 and Hispanics said affirmatively that they believed that
8 someone should show positive identification at the poll.

9 Q. Did you read that poll yourself --

10 A. Yes.

11 Q. -- or --

12 A. Yes. All the polls I, by Googling and pulling
13 up the polls, there were multiple polls done, and I
14 looked at the polls that -- every one of the polls, who
15 consulted -- who conducted the poll, what was the
16 question asked and the result of the poll.

17 Q. Do you know how that that particular poll by
18 the University of Texas ensured that the people
19 responding to it were a representative sample of the
20 population?

21 A. This was a, you know, a nonpartisan poll by a
22 public university, and that my belief was that they --
23 that the sampling that they had received was a proper
24 sampling.

25 Q. Do you know whether the poll asked about

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1 specific forms of identification and asked whether the
2 responders to the poll would support a Voter ID bill
3 that included those specific forms of identification?

4 A. To my knowledge, those questions were not
5 asked, because at that time, the bill was still in a
6 maturing process and that I think the question they
7 asked was should someone have to prove they are who they
8 say they are when they go to vote.

9 Q. Do you know whether the poll also asked whether
10 voters would support a Voter ID bill that had the effect
11 of disproportionately impacting a portion of the
12 population?

13 A. To my knowledge, that question was not asked.

14 Q. Do you agree that the responses to a poll
15 depend on the particular questions that are asked?

16 A. I believe when you have a poll, whatever
17 question is asked is what people will respond to.

18 Q. You also mentioned that you looked at studies
19 from I believe it was the Heritage Foundation and the
20 University of Missouri. Do you recall what those
21 studies pertained to?

22 A. The same issue, they asked if someone should
23 have showed positive identification before voting.

24 Q. And what population were they asking that
25 question of?

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1 A. Again, I'm -- I'm not privileged to the sample
2 of people that they used.

3 Q. Was -- were those studies directed at Texas or
4 at other states?

5 MS. HALPERN: I want to be clear here.
6 Are you asking about studies or about polls?

7 MS. FARANSSO: I'm asking about the
8 Heritage Foundation and University of Missouri --

9 MS. HALPERN: Studies, okay.

10 MS. FARANSSO: -- that he referenced.

11 A. The studies -- you're asking about studies or
12 polls?

13 Q. (By Ms. Faransso) You tell me. Were they
14 studies or were they polls?

15 A. They were both.

16 Q. Okay. And did they pertain specifically to
17 Texas or to other states?

18 A. The studies were general polls about the
19 results in other states. The polls that I was looking
20 at were actually Texas polls.

21 Q. Which polls pertained to Texas?

22 A. I've told you that I saw polls from the
23 University of Texas, an independent poll. I believe the
24 University of Mississippi or Missouri did a poll in
25 Texas. And I believe the Heritage foundation did a

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1 poll. And there -- they -- I'm sorry, there's a --
2 another poll that was quoted often that I've used
3 before, and I just can't pull up the name of it.

4 Q. So I --

5 A. Lighthouse, I believe it was.

6 Q. Lighthouse, okay. So I was asking you some
7 specific questions about the University of Texas polls.

8 A. Uh-huh.

9 Q. With respect to other polls that you looked at
10 that pertained to Texas specifically, did any of them
11 ask about specific forms of identification when asking
12 responders whether they would support a Voter ID bill.

13 A. To my knowledge, I never saw a poll that said
14 specifically, would you support this particular type. I
15 think the questions were generic, should they have to
16 identify themselves is that a positive identification
17 before voting.

18 Q. Okay. Thank you. You gave advance notice to
19 the Lieutenant Governor that you were going to file SB
20 362 before you filed it, correct?

21 MS. HALPERN: Objection.

22 A. Yes.

23 MS. HALPERN: Legislative privilege. You
24 can answer.

25 A. The answer is "yes."

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1 Q. (By Ms. Faransso) And why did you notify the
2 Lieutenant Governor?

3 MS. HALPERN: Objection, legislative
4 privilege.

5 A. It is -- it is custom in the Texas Legislature
6 that if you're filing a bill, you should lay out notice
7 that you're filing it. It doesn't keep someone else
8 from filing it, but you're putting a kind of place
9 keeper on that legislation that it is your intent to
10 file. And I was advising both the Lieutenant Governor
11 and the other members that I did plan to file it. And,
12 but it also didn't mean that other members wouldn't also
13 file a bill.

14 Q. (By Ms. Faransso) Sure, that makes sense. Was
15 Voter ID legislation a priority for the Lieutenant
16 Governor at that time?

17 MS. HALPERN: Objection, calls for
18 speculation.

19 A. I think you'll probably have to ask the
20 Lieutenant Governor that question.

21 Q. (By Ms. Faransso) Okay. Was Senate Bill 362
22 considered a low bill number in the Texas Senate?

23 A. 362 was the bill number of -- there were 361
24 bills filed before I filed it, and 362 was the bill
25 number that was assigned.

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1 Q. And would you consider that a low bill number?

2 A. I consider it that the -- it was 361 bills
3 filed before it.

4 Q. Do you know how many bills are filed in a
5 legislative session?

6 A. About 7,000.

7 Q. Did you ask to refile the bill to receive a
8 lower bill number?

9 A. Once again --

10 MS. HALPERN: Objection, legislative
11 privilege. You may answer.

12 A. -- you're asking about something that happened
13 five to six years ago. I don't remember, but I do not
14 believe that I asked for a lower number.

15 MS. WESTFALL: Objection, nonresponsive
16 answer. What -- to the extent that we keep hearing
17 about how this happened five years ago, that was
18 nonresponsive to the question. Move to strike.

19 A. Well, I will reanswer that, to my knowledge, I
20 do not remember asking for a lower bill number.

21 MS. HALPERN: The witness is entitled to
22 qualify his answer, Counsel.

23 Q. (By Ms. Faransso) Senator, do you recall any
24 conversations with bill opponents before Senate Bill 362
25 was filed?

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1 A. Again, you're asking me to confirm that someone
2 is going to be an opponent, and we don't know that
3 they're an opponent until they're voted on. But I had
4 conversations with people that had been opposed to the
5 bill prior to this.

6 Q. And with whom did you have those conversations?

7 MS. HALPERN: Objection, legislative
8 privilege.

9 A. The senators have a lot of conversation with
10 each other because we're friends and we travel
11 together. A conversation I remember is with John
12 Whitmire, which is the senior Democrat member.

13 Q. (By Ms. Faransso) Do you recall the nature of
14 that conversation?

15 A. I believe he asked me if I was going to file
16 Voter ID again.

17 Q. Okay. Do you recall any other conversations
18 with senators who had opposed Voter ID legislation in
19 the past after you filed Senate Bill 362?

20 MS. HALPERN: Objection, legislative
21 privilege.

22 A. If you're asking if I had a conversation after
23 the filing, the answer would be yes, because that would
24 extend up to the period of the discussion of the bill.
25 And the members of the Texas Senate, we visit with each

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1 other every day on the Floor, so the answer would have
2 to be yes.

3 Q. (By Ms. Faransso) Did you take any steps to
4 address any concerns raised by bill opponents prior to
5 filing the bill?

6 MS. HALPERN: Objection, assumes --

7 A. I --

8 MS. HALPERN: Objection, no foundation.

9 MS. FARANSSO: I'll rephrase. I'm sorry.

10 Q. (By Ms. Faransso) Did you take any steps to
11 respond to concerns raised by bill opponents generally
12 at any point in the process?

13 A. Well, the answer would have to be yes, because
14 the bill that came from the House in 2007, I wasn't
15 comfortable with what was in the bill, and I thought it
16 was a good starting point. But I did address the
17 concern of members, because we used that as a starting
18 point for 362.

19 Q. I'd like to talk a little bit about the
20 Senate's consideration of Senate Bill 362.

21 (Exhibit 8 marked for identification.)

22 Q. (By Ms. Faransso) You've just been handed
23 what's been marked as Exhibit 8. And Senator --

24 A. Hold on a minute.

25 Q. Oh, sure.

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1 A. Let me do a little housekeeping here and get
2 some of this out of my way, so I've -- I've got too many
3 items open at the moment.

4 MS. HALPERN: Are you through with 362?

5 MS. FARANSSO: I would keep it available
6 just in case. Thank you.

7 MS. HALPERN: Through with 218?

8 (Brief discussion off the record.)

9 A. Okay, go.

10 Q. (By Ms. Faransso) Okay. And Senator, I'm not
11 going to ask you to review the entire document. It's
12 actually just an excerpt. But just looking at the cover
13 page, do you know what this is?

14 A. It appears to be at least a cover of the Senate
15 Rules that were adopted on January 14, 2009.

16 Q. And does the Senate adopt a new set of rules
17 each legislative session?

18 A. Every regular session and every special
19 session.

20 Q. Thank you. If you could turn to page 24, just
21 a few pages in, because as I mentioned, this is an
22 excerpt. And looking at page 24, are you familiar with
23 Rule 5.11?

24 A. I am.

25 Q. Okay. What is a special order?

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1 A. Special order, as you can see would be, "order
2 should be considered at the time for which it's set and
3 considered and the date disposed of and unless the time
4 is fixed as pending," and if you'd like me to read the
5 whole thing, "a special order would set a special order
6 of business."

7 Q. Okay. Is the purpose of Rule 5.11 that a
8 two-thirds' vote is required in order to move a bill out
9 of the regular order of business on the Senate calendar?

10 MS. HALPERN: Objection, calls for
11 speculation. You can ask for his interpretation.

12 A. You're -- you're actually asking duplicate
13 questions that are not connected to each other that we
14 discussed in the last deposition is that we have a
15 regular order of business, and the rules say that all
16 bills will be held -- heard in that order. If you want
17 to have your bill heard out of order, you have the right
18 to suspend the regular order of business. To suspend a
19 rule is a two-thirds' vote. If you choose to make that
20 motion, then you ask to suspend the regular order of
21 business. Then once that -- if you're successful in
22 doing that, your bill jumps over the other bills above
23 it and can be held -- heard.

24 Q. (By Ms. Faransso) Thank you. So is it fair to
25 say that without a two-thirds' vote, a bill must be

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1 considered in the regular order of business?

2 A. Unless you -- no, that is not correct. A bill
3 per the rules of the Senate has to be heard in the
4 regular order of business.

5 Q. And what is the purpose of that procedural
6 framework?

7 MS. HALPERN: Objection, calls for
8 speculation.

9 A. The purpose of the special -- the vote to
10 suspend the regular order of business is that I want my
11 bill to be heard before the bills in front of it.

12 Q. (By Ms. Faransso) That makes sense. If you
13 could please look at Subsection D of Rule 5.11? What is
14 the effect of Subsection D?

15 A. "Notwithstanding Subsection A of this bill, the
16 bill or resolution relating to voter identification
17 requirements reported favorably from the Committee of
18 the Whole may be set as a special order for a time at
19 least 24 hours when the motion is adopted by a majority
20 of the members of the Senate."

21 Q. Thank you. Who introduced the resolution to
22 add Subsection D to Rule 5.11?

23 A. You're asking me to speculate on who inserted
24 that, and I can't speculate other than I didn't -- I was
25 not involved.

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1 Q. And just to be clear for the record, I'm not
2 asking you to speculate. I'm simply asking if you were
3 aware. And that goes for all my questions.

4 A. Wait, was I aware of what?

5 Q. Are you aware of who introduced the resolution
6 to add Subsection D to Rule 5.11?

7 A. No.

8 Q. Okay. Thank you. Was it your idea to
9 introduce this rule?

10 A. No.

11 Q. What was the purpose of providing that Voter ID
12 legislation could be treated as a special order under
13 this rule?

14 MS. HALPERN: Objection, vague.

15 A. Would you like for me to read D to you again,
16 because the words speak for themselves?

17 Q. (By Ms. Faransso) I'm simply asking for you to
18 tell me what you think the purpose was, if you know.

19 MS. HALPERN: That's a different question,
20 and I'm going to object to that one on legislative
21 privilege, and then you can answer it, what you think
22 the purpose was.

23 A. Well, the words speak for themselves is that
24 this would be a special order and could be adopted at
25 least 24 hours after a motion by majority of the Texas

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1 Senate. It is not unusual for a special order to be put
2 in the rules. Actually, between 1972 and 1979, during
3 the 20 -- obviously, it was a 20-year period, I believe
4 it took 15 or 16 of those years at special sessions that
5 a special order is put in place by the Democratic
6 Lieutenant Governor, so it is not unusual that you have
7 special orders to be put in -- in the rules.

8 Q. (By Ms. Faransso) And when you say it's not
9 unusual, you mean that there would be a paragraph
10 similar to this?

11 A. Exactly identical to this but it would be
12 addressing specific issues, and they would have a
13 special order for a bill to be heard per the same
14 wording, this D, 24 hours after the motion is adopted by
15 a majority of the Texas Senate.

16 Q. Thank you. Senator, do you believe that Senate
17 Bill 362 would have passed the Senate if it were not for
18 Rule 511D?

19 MS. HALPERN: Objection, calls for
20 speculation.

21 A. And I may need that question asked again,
22 please.

23 Q. (By Ms. Faransso) Do you --

24 MS. FARANSSO: Can you, actually, read it
25 back, please?

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1 (Requested portion was read back by the
2 court reporter.)

3 A. There's no way for me to project what the
4 people would have voted for or against.

5 Q. (By Ms. Faransso) That's fair. You mentioned,
6 I believe, that it is not unusual for legislation to be
7 treated as a special order. Is that true for regular
8 sessions of the Senate or special sessions?

9 A. Yes, it is true for both.

10 Q. For both. And how many special orders have
11 been set by Republican Senators?

12 MS. HALPERN: Objection, assumes facts not
13 in evidence.

14 A. And you're asking an extremely broad question
15 and assuming that I know everything from the history of
16 Texas all the way back to 1845 when we became a state.
17 But the current history of since I've been there in the
18 Legislature and the research I've done, I did go back as
19 far as 1972, and every special order that was put in
20 place prior to probably 1999 was placed in special order
21 by a Democrat Legislature or Senate or a Democrat
22 Lieutenant Governor. So asking a question of what's
23 Republican or Democrat, very, very, very few have been
24 placed by Republicans, because we didn't have Republican
25 control until 1997.

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1 Q. (By Ms. Faransso) Thank you for that
2 explanation.

3 The Lieutenant Governor referred Senate
4 Bill 362 to the Committee of the Whole; is that right?

5 A. Yes.

6 Q. Is that very common?

7 A. Yes, well, I'm going to retract my yes. You're
8 using the word "common." It is not unusual for a bill
9 to be filed. There are not very many bills that are
10 filed with the Committee of the Whole, but it is a
11 common practice that is used when there's a bill that
12 has the interest of all Senators.

13 Q. Election bills are normally referred to the
14 State Affairs Committee; is that right?

15 A. Once again, you're making a generalization.
16 State Affairs receives a lot of election bills. But the
17 referral of bills is left up to the Lieutenant Governor,
18 and I think that question would be best asked of him. I
19 believe you're going to be able to ask that. But
20 generally saying that they're all sent, I would have to
21 say no.

22 Q. HB 218 was referred to the State Affairs
23 Committee; is that correct?

24 A. To my knowledge, that's where it went.

25 Q. Do you recall any election bills other than

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1 Senate Bill 362 and Senate Bill 14 that were referred to
2 the Committee of the Whole during your tenure as a
3 Senator?

4 A. To my knowledge, I do not remember another
5 election-related bill referred to the Committee of the
6 Whole.

7 Q. Does referral of a bill to the Committee of the
8 Whole expedite the consideration of that bill?

9 A. No.

10 MS. HALPERN: I'm sorry, what was the
11 answer?

12 A. No. The bill would still be heard in the
13 regular order of business. If you're going to change
14 the regular order of business, you know, it would be a
15 vote unless there was a special order on the bill.

16 Q. (By Ms. Faransso) Unless there was a special
17 order on the bill.

18 (Exhibit 9 marked for identification.)

19 Q. (By Ms. Faransso) Senator, you've been handed
20 what has been marked as Exhibit 9. Right there. And
21 it's an e-mail from Bryan Hebert to your chief of staff,
22 Janice McCoy, dated March 4, 2009.

23 MS. FARANSSO: And I will note for the
24 record that this is highly confidential.

25 MS. HALPERN: Which means any questions

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1 about it are under seal.

2 MS. FARANSSO: In case it was not clear.

3 Q. (By Ms. Faransso) Who is Bryan Hebert?

4 A. I'm -- I don't know how to answer that. It's a
5 name I'm familiar with, but it is not in my employ.

6 Q. Okay.

7 A. I'm not sure who he --

8 Q. Do you see on the cover e-mail there that his
9 title is Deputy General Counsel, Office of the
10 Lieutenant Governor?

11 A. I see that.

12 Q. There are some attachments to this e-mail, and
13 I simply want to know whether you recognize any of these
14 attachments.

15 A. I recognize none of the --

16 Q. I'm sorry?

17 A. I recognize none of the attachments.

18 Q. (By Ms. Faransso) Okay. If you don't mind, I
19 might just ask you a couple quick questions about the
20 document and then we can move on. If you turn to the
21 second page, which is the back of the first page, it's
22 titled, "Reasons to Support SB 362 as Filed." Could you
23 please read point 1 on that page?

24 A. "The bill improves security in election process
25 but not as restrictive as Indiana and Georgia. There's

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1 less chance of disenfranchising elderly, poor and
2 minority voters."

3 Q. Did you agree with the statement?

4 A. I've never seen that -- that before, so.

5 Q. Do you recall hearing this argument?

6 MS. HALPERN: Objection, vague, no
7 foundation.

8 A. Could you be clearer of who I would have heard
9 it from?

10 Q. (By Ms. Faransso) Do you recall during the
11 consideration of Senate Bill 362 the argument that that
12 bill was left restrictive than the Indiana and Georgia
13 Voter ID laws, and thus, had a less of a chance of it
14 disenfranchising elderly, poor or minority voters?

15 A. No.

16 Q. Did Janice McCoy ever mention this argument to
17 you?

18 A. No.

19 MS. HALPERN: Objection, legislative
20 privilege. You can answer.

21 A. No.

22 Q. (By Ms. Faransso) Sitting here today, would
23 you agree with the statement?

24 A. You're asking me to agree to a statement made
25 by someone else, and you would have to ask them.

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1 Q. I'm just asking if you agree with the
2 statement.

3 A. I don't have enough information to make a
4 determination.

5 Q. Could you please read point 5 for me?

6 A. "Increases chances of federal preclearance,
7 because many forms of ID are acceptable and provisional
8 ballots and procedures are less burdensome."

9 Q. Do you recall hearing the argument during the
10 consideration of Senate Bill 362 that there was an
11 increased chance of federal preclearance because many
12 forms of ID were acceptable and the provisional ballot
13 procedure was less burdensome?

14 A. No.

15 Q. Do you recall Janice McCoy mentioning this
16 argument to you?

17 A. No.

18 Q. You can put that document away. Just a few
19 more questions on Senate Bill 362, Senator, and then
20 maybe it would be a good time for a break.

21 (Exhibit 10 marked for identification.)

22 Q. (By Ms. Faransso) The court reporter has
23 handed you what has been marked as Exhibit 10. Do you
24 recognize this document?

25 A. Appears to be a -- from the Senate Journal,

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1 Wednesday, March 18, 2009.

2 MS. HALPERN: Let the record reflect this
3 is an excerpt.

4 MS. FARANSSO: That's correct.

5 Q. (By Ms. Faransso) This is an excerpted copy of
6 the Senate Journal. If you could turn to page 591, and
7 again, it's not too many pages in because this is an
8 excerpt. Do you see the statement, "Submitted by
9 Senator West" halfway down the page?

10 A. Yes.

11 Q. Do you recall this statement?

12 A. No.

13 Q. Could you please read the first paragraph of
14 the statement?

15 A. "Senator West submitted the following
16 statement."

17 Q. Can you please read the second paragraph?

18 A. "We offered the following statements with
19 respect to our votes in Senate Bill 362 and ask that
20 they be spread upon the Journal of the Senate."

21 Q. Thank you. If you could turn to the next page,
22 the statement continues on to that page. Could you
23 please read Paragraph 6?

24 A. "On March 18, the Senate took up Senate Bill
25 362 on third reading. The vote on the legislation was

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1 19-12. All eight ethnic minority senators voted against
2 the legislation."

3 Q. And could you please read Paragraph 8?

4 A. "Of all the opportunities members of the Senate
5 have to vote on voter identification legislation or
6 Senate process regarding voter identification
7 legislation, no senator who is an ethnic minority has
8 voted in favor of such legislation or the process
9 related to such legislation."

10 Q. Is it fair to say that this statement from
11 Senator West reflects that all eight senators who are
12 ethnic minorities at that time voted against Senate Bill
13 362?

14 A. No.

15 Q. Why is that not a fair statement?

16 A. I don't believe Senator Watson is an ethnic
17 minority.

18 Q. Senator --

19 A. I believe Senator Whitmire is an ethnic
20 minority.

21 Q. I might actually point out, if I'm not
22 mistaken, if I'm counting correctly, that the names
23 listed there are ten names, but the statement actually
24 refers to eight Senators.

25 A. Once again, I don't see eight ethnic minorities

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1 within that group.

2 Q. Were you aware that senators who were ethnic
3 minorities were opposed to Senate Bill 362?

4 A. There were ethnic minorities that opposed my
5 bill.

6 Q. Do you know why they opposed your bill?

7 A. I believe you would have to ask them.

8 Q. Do you recall any of their specific objections
9 to the bill?

10 A. There in the testimony and the questioning on
11 the Floor that went for 27 hours, yes, there were
12 objections raised.

13 Q. Did you have any concerns that those objections
14 would create any barriers to preclearance of the bill
15 under Section 5 of the Voting Rights Act?

16 A. I believe that the bill that we were attempting
17 to pass would pass preclearance.

18 Q. Why do you think there was such strong
19 opposition by these senators to your bill?

20 A. I have no idea, because I do not believe that
21 their constituents had said affirmatively that they were
22 in favor of photo identification and is one of the
23 questions I asked them is how could you possibly be
24 against this bill. I did not understand why any of
25 these people opposed the bill.

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1 Q. And if you could just clarify what you said.
2 You said that their constituents were in support of the
3 bill?

4 A. The polling had showed in every instance that
5 over 50 percent of Republicans, Democrats, African
6 Americans, Hispanics, were over 50 percent were in favor
7 of this. That would imply that their districts, their
8 constituents were in favor of it.

9 Q. Is that the polling that we discussed a little
10 bit earlier this morning?

11 A. Yes.

12 Q. And again, that polling did not ask about
13 specific forms of ID, did it?

14 A. They asked, should you have to identify, give
15 positive identification before you vote.

16 Q. But it did not ask about specific forms of ID
17 that might be included in Voter ID legislation?

18 A. I don't -- I do not know the answer to that.

19 Q. Senate Bill 362 passed in the Senate but not in
20 the House, correct?

21 A. That is correct.

22 Q. Do you recall who sponsored the bill in the
23 House?

24 A. Todd Smith.

25 Q. Did you or anyone in your office have any

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1 conversations with Representative Smith regarding the
2 bill once it went to the House?

3 A. Yes.

4 Q. And what was the nature of those conversations?

5 MS. HALPERN: Objection on the grounds of
6 legislative privilege. And in order to be consistent,
7 I'm going to direct him not to answer. Because the line
8 that we have drawn for the court is that where the
9 witness is being asked his own opinions, thoughts and
10 mental impressions, he can waive his own legislative
11 privilege. He cannot waive the legislative privilege of
12 somebody else. That representative is entitled to
13 legislative privilege. And if I allow the witness to
14 answer the question, then that representative is being
15 deprived of even the ability to assert it. So for these
16 questions, and I'm just making a clear record, where you
17 ask him about somebody else's opinion or statements, I'm
18 going to direct him not to answer.

19 MS. WESTFALL: For the record, we can --
20 it is our position that we can ask questions along the
21 lines of privilege law, how many conversations, general
22 nature of the conversation, who was the conversation
23 with, notwithstanding your direction. Would you agree
24 with that?

25 MS. HALPERN: And we would agree with

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1 that, yes. You can ask about the number of
2 conversations. You just can't ask about the substance
3 of them.

4 MS. FARANSSO: Can you read the last
5 pending question, please?

6 (Requested portion was read back by the
7 court reporter.)

8 A. My answer would be yes.

9 Q. (By Ms. Faransso) How many conversations?

10 A. It would be impossible for me to tell you the
11 number of conversations. The very nature of the way the
12 Texas Legislature works is that once a body -- the bill
13 leaves one body and moves to the other, we allow the
14 process to work, and they would deal with the bill. If
15 they had questions on the bill, we would answer those
16 questions. So I'm sure there were conversations.
17 Generally, the conversations are staff-to-staff.
18 Member-to-member conversations are not as common. I'm
19 sure that I had conversations with Representative Smith,
20 but very few.

21 Q. Would Ms. McCoy have had those conversations on
22 your behalf?

23 A. I cannot speak for Ms. McCoy.

24 Q. When you say staff-to-staff, who on your staff
25 would have had those conversations?

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1 A. Ms. McCoy.

2 Q. Did you have conversations with any other House
3 members about the bill once it went to the House?

4 A. 362, I would say no.

5 Q. Okay. Did you have any discussions with the
6 Lieutenant Governor's office about a strategy for
7 securing passage of Senate Bill 362 in the House?

8 MS. HALPERN: I'm going to object to that
9 on the grounds of legislative privilege, because you've
10 suggested a subject matter as well as the fact of
11 conversations.

12 Q. (By Ms. Faransso) Did you have any
13 conversations with the Lieutenant Governor's office
14 about Senate Bill 362 once it went to the House?

15 A. To my knowledge, no.

16 Q. Would you like to continue or do you need a
17 break?

18 A. I'm fine.

19 Q. Okay. I'm going to move on to Senate Bill
20 14. After failure of Senate Bill 362 in the House, did
21 you have any discussions with the Lieutenant Governor's
22 office about next steps with regard to Voter ID
23 legislation?

24 MS. HALPERN: Objection, legislative
25 privilege. You can say "yes" or "no."

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1 A. Yes.

2 Q. (By Ms. Faransso) How many conversations?

3 A. More than likely only one.

4 Q. Did you have any discussions with anyone else
5 about being the author of a new Voter ID bill?

6 A. I'm sorry, I need to back up. Was the question
7 you asked before prior to the filing of?

8 Q. Yes.

9 A. And my answer still is likely one.

10 Q. Did you have any conversations with anybody
11 else about being the author of a new Voter ID bill after
12 Senate Bill 362 failed?

13 A. Yes.

14 Q. With whom did you have those conversations?

15 MS. HALPERN: Objection, legislative
16 privilege. You can answer.

17 A. Ms. McCoy.

18 Q. (By Ms. Faransso) Okay. When did the Voter ID
19 issue arise again for you?

20 MS. HALPERN: You mean after 362?

21 MS. FARANSSO: Yes.

22 MS. HALPERN: What is again in reference
23 to?

24 MS. FARANSSO: Let me clarify.

25 Q. (By Ms. Faransso) After Senate Bill 362 failed

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1 in the House, when did the issue of Voter ID legislation
2 arise again?

3 A. You're implying that it went away. It was
4 always there. And after 362 failed, 14 was a
5 continuation of 362.

6 Q. Do you recall that you filed a Voter ID bill in
7 the Senate on November 8th, 2010, and that it received
8 the bill number of Senate Bill 178?

9 A. Yes.

10 Q. Okay. You refiled that bill to get a lower
11 bill number; is that right?

12 A. You've asked the question incorrectly. If
13 you'll ask it correctly, I'll answer your question.

14 Q. Did you refile that bill to get a lower bill
15 number?

16 A. Once again, if you'll read -- if you'll ask the
17 question correctly, I'll answer it.

18 Q. I'm simply --

19 MS. WESTALL: Objection, move to strike on
20 nonresponsive.

21 Q. (By Ms. Faransso) Did refile Senate Bill 178?

22 A. No.

23 Q. How -- actually --

24 (Exhibit 11 marked for identification.)

25 Q. (By Ms. Faransso) Did your staff refile --

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1 did anyone on your staff --

2 A. I'm very aware of where you're trying to get
3 to, but the -- 178 was filed and continued as a bill
4 that had been filed.

5 Q. Did that bill get refiled?

6 A. The content of one -- of a -- a like content of
7 bill 178 was refiled again.

8 Q. And when that bill was refiled, did it receive
9 the bill number Senate Bill 14?

10 A. Yes.

11 Q. And did you refile that bill at the request of
12 the Lieutenant Governor?

13 A. Yes.

14 Q. Okay. Thank you. Does the Lieutenant Governor
15 reserve lower bill numbers for legislative priorities?

16 A. Yes.

17 Q. Does a lower bill number expedite the
18 consideration of a bill?

19 A. No.

20 Q. Is there any other procedural advantage to
21 having a lower bill number?

22 A. No.

23 Q. So what is the purpose of refileing a bill?

24 A. I believe you're going to have to ask the
25 Lieutenant Governor that question.

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1 Q. What did you believe was the purpose of
2 refiling Senate Bill 178 as Senate Bill 14?

3 MS. HALPERN: Objection, calls for
4 speculation. You can ask him what he thought himself,
5 not what he thought the Lieutenant Governor's thought
6 was.

7 MS. FARANSSO: I believe I asked what --
8 what he thought. Can you read the question back?

9 (Requested portion was read back by the
10 court reporter.)

11 A. I believe it was the response from the
12 Lieutenant Governor that said he would like for you to
13 refile the bill.

14 Q. (By Ms. Faransso) Thank you. You were the
15 author of Senate Bill 14; is that right?

16 A. Yes.

17 Q. And as the author, you drafted and filed the
18 bill, correct?

19 A. No.

20 Q. Who drafted and filed the bill?

21 A. Janice McCoy.

22 Q. She filed -- drafted and filed the bill on your
23 behalf, correct?

24 A. Yes.

25 Q. Were you involved in the drafting of the bill?

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1 A. Yes.

2 Q. What was your involvement?

3 A. Suggestions on content of the bill.

4 (Exhibit 12 marked for identification.)

5 Q. (By Ms. Faransso) Senator, you've been handed
6 what has been marked as Exhibit 12, and we will spend
7 very little time on this document. But do you recognize
8 this document based on the cover page?

9 A. Appears to be an excerpt from the Senate Rules
10 of the 2011 session.

11 Q. If you could please turn to page 24 and look at
12 Rule 5.11, and specifically Rule 511D. Does this
13 reflect that in 2011, the Senate adopted the same rule
14 it had adopted in 2009, which allowed bills relating to
15 Voter ID to be set by a special order by a majority of
16 the Senate rather than by two-thirds' vote?

17 A. It implies that the rules that were adopted in
18 2009 carried forward and were readopted as they were in
19 2011 -- 2009, they were adopted identically in 2011.

20 Q. Thank you. Do you recall if there was an
21 exemption for any area of legislation in the 2013 rules?

22 A. I'm sorry, I do not.

23 Q. You do not recall?

24 A. I don't recall.

25 Q. Okay. Do you recall that during the 2011

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1 legislative session, Governor Perry designated the issue
2 of Voter ID legislation as emergency legislation?

3 A. Am I aware?

4 Q. Yes.

5 A. I am aware.

6 Q. Okay. Did you or your office have any
7 conversations with the Governor's Office prior to the
8 Governor making that designation?

9 A. No.

10 MS. HALPERN: Object -- I would have, but
11 it doesn't matter now.

12 A. No.

13 Q. (By Ms. Faransso) Did you or your office have
14 any conversations with the Lieutenant Governor's Office
15 prior to the Governor making that designation?

16 MS. HALPERN: Objection, legislative
17 privilege.

18 A. No.

19 MS. HALPERN: Do you want to take a break?

20 A. Sure.

21 MS. HALPERN: Let's take a break.

22 MS. FARANSSO: Sure.

23 (Brief discussion off the record and
24 recess delayed.)

25 (Exhibit 13 marked for identification.)

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1 Q. (By Ms. Faransso) Senator Fraser, you've been
2 handed what has been marked as Exhibit 13. Do you
3 recognize this document?

4 A. Press release from my office.

5 Q. Did Ms. McCoy draft this document?

6 A. Yes.

7 Q. Did she draft it at your direction?

8 A. It appears that -- I'm assuming she drafted it
9 because most of it -- she did most of the ones, and I'm
10 assuming -- I don't know that I directed her. She may
11 have drafted it and then shown it to me. So I can't say
12 that I asked her to.

13 Q. And does this press release pertain to Governor
14 Perry's declaration of Voter ID as an emergency item of
15 legislation?

16 A. It appears to be.

17 Q. Okay. Why did you think it was important to
18 designate Voter ID legislation as an emergency item?

19 MS. HALPERN: Objection, legislative
20 privilege.

21 A. Governor Perry is the one that declared it
22 emergency. I didn't ask him to do it. This is a
23 announcement that he has done it and thanking him for
24 doing it.

25 Q. (By Ms. Faransso) Can you please read the

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1 first paragraph of the press release?

2 A. "I want to thank Governor Rick Perry for
3 declaring Voter ID an emergency for the legislative
4 session by taking this action. The Legislature will be
5 able to address this priority issue more quickly."

6 Q. Does this reflect that by designating Voter ID
7 as an emergency item of the legislation, the issue would
8 be addressed more quickly by the legislature?

9 A. It is implied that is the case, but that's not
10 always the case. I had an emergency item in the 2013
11 session that wasn't heard until the end of the session.
12 So it doesn't necessarily always mean it will be heard.

13 Q. But generally speaking, the Texas Constitution
14 prohibits the passage of bills within the first 60 days
15 of the legislative session unless the Governor
16 designates an item as an emergency matter; is that
17 correct?

18 MS. HALPERN: Objection, calls for a legal
19 conclusion.

20 MS. FARANSSO: Counsel, I'm asking about
21 the Texas Constitution and his familiarity with it based
22 as a -- his familiarity with it.

23 MS. HALPERN: You can ask him his
24 familiarity with it, but we've had objections in other
25 depositions from defendants to witnesses proffering

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1 legal conclusions about what the Texas Constitution
2 says. So having been instructed in that fashion, I am
3 objecting that you're calling for a legal conclusion.
4 He can tell you what he thinks it means.

5 Q. (By Ms. Faransso) Senator, are you aware that
6 the Texas Constitution prohibits the passage of a bill
7 within the first 60 days of a legislative session unless
8 it has been designated as an emergency item?

9 A. That is my understanding of the Texas
10 Constitution.

11 Q. Thank you. Was there an urgency in your mind
12 requiring the expeditious passage of Senate Bill 14?

13 A. It's interesting that the Democratic caucus
14 took a position that it would like to go ahead and get
15 this out of the way. So the answer is yes, that it was
16 a general consensus of the Senate as a whole. We didn't
17 make an official decision of that because you can't do
18 that. But the -- both caucuses agreed that it would be
19 nice to go ahead and deal with this issue early.

20 Q. The release states -- and let me just find the
21 paragraph. The second to last paragraph, the very last
22 full line, it states, "Without a photo ID requirement,
23 we can never have confidence in our system of voting."
24 What did you mean here by confidence in our system of
25 voting?

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1 A. I believe that without a photo ID requirement,
2 we can never have confidence in our system of voting.

3 Q. And what do you mean by confidence?

4 A. Without a photo ID requirement, we can never
5 confidence in our system of voting.

6 Q. What was your -- the factual basis for your
7 belief that without a photo ID requirement, we could not
8 have confidence in our system of voting?

9 A. I don't think I'm quoting anything other than
10 saying without a photo ID requirement, we can never have
11 confidence in our system of voting.

12 Q. So there was no factual basis to that
13 statement?

14 A. That that's your opinion. You're answering for
15 me. The words on the paper say you cannot have a --
16 without a photo ID requirement, we can never have
17 confidence in our system. That gives my opinion.

18 MS. WESTFALL: Objection, nonresponsive.

19 Q. (By Ms. Faransso) Can you please tell me
20 whether there was a factual basis for that opinion?

21 A. There had been hours of testimony on the bill
22 over the last six years on this issue and so there had
23 been a lot of evidence delivered showing that without a
24 photo ID requirement, we could not have confidence in
25 our system. So yes, there was many, many, many hours of

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1 testimony showing that.

2 Q. The photo ID requirement in Senate Bill 14 was
3 intended to combat only in-person voter fraud, correct?

4 A. Yes.

5 Q. Do you recall whether January 11, 2011 was the
6 first day of the 82nd session?

7 A. I do not recall, no.

8 Q. I can represent to you that it was the first
9 day unless you would like to see a document showing
10 that.

11 A. If you say it is, I -- that's sounds right.

12 Q. Do you recall when Senate Bill 14 passed?

13 A. It was the end of January. The last week of
14 January.

15 Q. And I think, specifically, I can represent to
16 you it was passed on January 26th, during the last week
17 of January. Are you aware of any other substantive
18 bills that the Senate passed in the first two weeks of
19 the legislative session in January?

20 A. Of 2011?

21 Q. Yes.

22 A. I'm sorry, I don't -- I don't have that
23 information.

24 Q. Do you think it's unusual for a bill to pass
25 within the first two weeks of a legislative session?

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1 A. No.

2 Q. Is it fair to say that Voter ID legislation was
3 a priority for the Lieutenant Governor at this time?

4 A. You'd have to ask the Lieutenant Governor that.

5 Q. Did you have any conversations with the
6 Lieutenant Governor's Office during the consideration of
7 Senate Bill 14?

8 MS. HALPERN: Yes or no.

9 A. Yes.

10 Q. (By Ms. Faransso) How often did you have those
11 conversations?

12 A. It's a very, very broad question you're
13 asking. I talked with the Lieutenant Governor almost
14 every day so we had more than one conversation.

15 Q. Going back to Senate Bill 14 itself, you
16 mentioned that Janice McCoy drafted the legislation and
17 you were involved as she drafted that legislation?

18 A. Yes.

19 Q. Do you recall consulting any sources as your
20 office drafted Senate Bill 14?

21 A. You're going to have to be --

22 MS. HALPERN: Objection.

23 A. -- more specific.

24 Q. (By Ms. Faransso) Do you recall looking at any
25 laws of other states while you were drafting Senate Bill

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1 14?

2 MS. HALPERN: And I'm going to object on
3 the basis of legislative privilege. You can answer.

4 A. Yes.

5 Q. (By Ms. Faransso) What's states in particular
6 did you look at?

7 MS. HALPERN: Objection, legislative
8 privilege.

9 A. There were 24 states by the time we passed
10 Senate Bill 14 that had enacted Voter ID laws.

11 Q. (By Ms. Faransso) Did you look at the laws in
12 Indiana and Georgia?

13 A. Yes.

14 MS. HALPERN: Objection, legislative
15 privilege. I've got to do this every question.

16 Q. (By Ms. Faransso) Was anyone else involved in
17 the drafting of Senate Bill 14 other than Ms. McCoy?

18 A. I want to go back to the prior question if I
19 could to continue my answer. I looked at the laws
20 passed in all 24 states that had enacted laws.

21 Q. Thank you.

22 (Exhibit 14 marked for identification.)

23 Q. (By Ms. Faransso) Senator, you've been handed
24 what has been marked as Exhibit 14. Do you recognize
25 this document?

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1 A. Appears to be the legislation, I believe, as
2 filed.

3 Q. That's correct. This is the introduced version
4 filed on January 12, 2011. If you turn to Page 9 of
5 this bill, I'm sorry, Page 8, and there's a list of
6 documentation of proof of identification provided there.
7 Senate Bill 14 included only photo identification,
8 correct?

9 A. That is correct.

10 Q. What was the purpose of excluding nonphoto
11 identification from Senate Bill 14?

12 MS. HALPERN: Objection, legislative
13 privilege.

14 A. By the time Senate Bill 14 was enacted, we had
15 six years of history in Texas and over eight years of
16 history of the issue in the United States, so we had
17 multiple elections that had been held and case law that
18 had gone before the U.S. Supreme Court, preclearance by
19 the Georgia Voter ID law, and that it was clear to us
20 from the testimony that we had heard that Texas was best
21 served by having a clear photo ID bill.

22 Q. (By Ms. Faransso) You mentioned that there
23 were six to eight years of previous history. Did
24 anything specifically occur between 2009 and 2011 that
25 made nonphoto ID an acceptable option in 2009 but not in

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1 2011?

2 MS. HALPERN: Objection, assumes facts not
3 in evidence.

4 A. And my answer would the same as the last
5 question, the last answer I gave, it will be the
6 identical answer, and I'll give it again if you'd like.

7 Q. (By Ms. Faransso) I'm asking what you can
8 point to between 2009 and 2011 that made nonphoto ID an
9 acceptable option in 2009 but not in 2011.

10 MS. HALPERN: Objection, assumes facts not
11 in evidence.

12 A. And my answer will continue to be the same, and
13 I will give the same answer again if you would like.

14 Q. (By Ms. Faransso) Please do.

15 A. That we had had six years of history in Texas
16 of testimony on the bills. You had had at least eight
17 years of history of both elections held in other states,
18 rulings by the U.S. Supreme Court and preclearance of
19 issues, including preclearance in Georgia, and with the
20 combination of all of that, Texas made a clear decision
21 that we would be best served by a clear photo ID bill.

22 Q. Let me first ask you about the elections you
23 referred to. Which elections specifically are you
24 referring to?

25 A. You're going to have to be more specific in

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1 your question, because there were 24 states that had
2 enacted the laws so you've had elections for in 24
3 states over that period. The longest period, obviously,
4 is Indiana and Georgia, and we reviewed the election
5 results. There had been studies done by multiple
6 people, including the University of Missouri, looking at
7 the results of turnout in those states.

8 Q. And did those studies look at the 2008
9 election?

10 A. There were studies of elections in 2008.

11 Q. Did those studies look at elections following
12 the 2008 election?

13 A. There were studies after 2008, yes.

14 Q. I'm sorry?

15 A. There were studies after 2008, yes.

16 Q. Were there studies of elections that occurred
17 after 2008?

18 A. The answer would be yes because this was due to
19 be held in 2011.

20 Q. Were you aware at the time of the racial
21 demographics in Georgia and Indiana?

22 MS. HALPERN: Objection, asked and
23 answered.

24 MS. FARANSSO: I'm asking at the time,
25 2011. We previously discussed 2009.

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1 A. The answer would be the same, because I don't
2 believe we had a mass exodus of one group coming or
3 going in those two states. I would represent, I would
4 believe, it would be, you know, pretty much the same.

5 Q. (By Ms. Faransso) Thank you.

6 A. Predominantly the same.

7 Q. With respect to Georgia and Indiana, those laws
8 are less restrictive than Senate Bill 14; is that
9 correct?

10 A. That would be your determination.

11 Q. Are those bills less restrictive than Senate
12 Bill 14?

13 A. Again, that would be your determination.

14 Q. Do you agree with the statement that those
15 bills are less restrictive than Senate Bill 14?

16 A. No, I do not agree with that.

17 (Exhibit 15 marked for identification.)

18 Q. (By Ms. Faransso) Senator, the court reporter
19 has handed you what has been marked as Exhibit 15. It's
20 an e-mail from Bryan Hebert to several individuals,
21 including Janice McCoy.

22 MS. FARANSSO: And I will note for the
23 record that this document is highly confidential.

24 Q. (By Ms. Faransso) Do you recognize the
25 attachment to Mr. Hebert's e-mail?

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1 A. No.

2 Q. Do you see that it's a Voter ID bill summary
3 for Senate Bill 14?

4 A. Appears to be.

5 Q. Can you please read the very first sentence of
6 that summary?

7 A. "Senate Bill 14 would give Texas arguably the
8 strictest photo ID law in the country. A review of the
9 U.S. Supreme Court approval of Indiana law and DOJ's
10 approval of Georgia photo law indicates the December
11 14th is likely to be upheld under both constitutional
12 review of Section 5 Voting Rights Act."

13 Q. With respect to that first sentence, "Senate
14 Bill 14 would give Texas arguably the strictest photo ID
15 law in the country," did you agree with that statement
16 at the time?

17 MS. HALPERN: Objection, assumes facts not
18 in evidence.

19 Q. (By Ms. Faransso) Have you seen this
20 statement?

21 A. No.

22 Q. Have you heard the argument that Senate Bill 14
23 arguably would have been the strictest photo -- photo ID
24 law in the country?

25 A. No.

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1 Q. And just for the record, do you agree with that
2 statement sitting here today?

3 A. You're projecting, I -- you know, I haven't
4 seen it. I haven't made that statement. And this
5 statement is made by someone else. It's not an employee
6 of mine. So the answer is no.

7 Q. You mentioned that you looked at the history of
8 elections in other states. Did you conduct any analysis
9 of data in Texas that led you to believe that photo ID
10 in 2009 was an acceptable option but was not an
11 acceptable option in 2011?

12 MS. HALPERN: Objection. I'm not sure
13 that's a question you meant to ask. Can I have it read
14 back?

15 MS. FARANSSO: I'm sorry.

16 MS. HALPERN: Maybe I misheard, but --

17 MS. FARANSSO: I will -- I will rephrase.

18 Q. (By Ms. Faransso) Did you look at any data
19 pertaining to Texas to determine that nonphoto ID was an
20 acceptable option in 2009 but not in 2011?

21 MS. HALPERN: And I'm going to object to
22 that because it assumes facts not in evidence.

23 A. You want me to go ahead and give you the
24 answer? It's going to be the same as I did prior to
25 that. Is we had six years of history of looking at

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1 this, many, many, many hours of testimony on this issue,
2 and based on that and the election results in other
3 states and other laws that had been enacted in other 24
4 states, we made the decision that Texas was best served
5 by strict photo ID bill.

6 Q. (By Ms. Faransso) When you say six years of
7 history, what did that history pertain to?

8 A. House Bill 218 was filed in 2007.

9 Q. What changed in Texas?

10 A. When I say -- I guess I need to clarify. Six
11 years would be three legislative sessions that are two
12 years between each one of them. So it wasn't six actual
13 years, but it was three legislative sessions that this
14 went on.

15 Q. Were there any facts that changed in Texas
16 pertaining to voter fraud that led you to believe that
17 nonphoto ID was an acceptable option in 2009 but not in
18 2011?

19 MS. HALPERN: Objection, assumes facts not
20 in evidence.

21 A. Once again --

22 MS. HALPERN: Compound.

23 A. -- there were three legislative sessions of
24 testimony that were heard on this issue, and we believe
25 based on the testimony of the elections that were held

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1 in other states, election results, 24 states enacting
2 Voter ID bill, that Texas would be best served by a
3 strict photo ID bill.

4 Q. (By Ms. Faransso) And I'm asking specifically
5 about facts about Texas. Were there any facts related
6 to the process of elections or voter fraud that led you
7 to believe that nonphoto ID was not -- no longer a
8 reliable means of proving one's identity at the polls?

9 MS. HALPERN: Objection, assumes facts not
10 in evidence.

11 A. Once again, the -- I will answer the exact same
12 way, because the testimony that happened, and more
13 specifically on 362, we had 27 hours of testimony in a
14 Committee as a Whole, to my knowledge, the longest
15 testimony that had ever been held on a bill, and based
16 on that testimony, the results of -- through the
17 Committee and looking at election results in other
18 states, and what had been passed, we believed Texas was
19 best served by a strict photo ID bill.

20 Q. (By Ms. Faransso) With respect to the
21 testimony on Senate Bill 362 that you mentioned, did any
22 of that testimony pertain to convictions related to
23 in-person voter fraud?

24 A. I can't specifically answer that, but I know it
25 was discussed that there -- I'm sorry, I can't answer

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1 that specifically.

2 Q. You do not recall any specific instances of
3 convictions?

4 A. You asked me to give specific information that
5 was in 2009, so it was five years ago, and I'm sorry,
6 no, I can't give you a specific example.

7 Q. Would allowing the use of nonphoto
8 identification in Senate Bill 14 have interfered with
9 the purposes of Senate Bill 14?

10 A. The bill speaks for itself. It was a strict
11 photo ID bill.

12 Q. And how would allowing nonphoto ID have
13 interfered with the purpose of preventing in-person
14 voter fraud?

15 A. It would have changed the bill from a strict
16 photo ID to a nonstrict photo ID.

17 Q. How would allowing nonphoto ID have interfered
18 with the purpose of preventing in-person voter fraud?

19 A. I don't believe we're discussing the purpose.
20 The purpose was to protect the integrity of the ballot
21 box, and in order to protect the integrity of the ballot
22 box, it is best served by having a strict photo ID bill.

23 Q. And again, just to -- so that the record is
24 clear, Senate Bill 14 was assigned only to combat
25 in-person voter fraud; is that correct?

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1 A. That is correct.

2 MS. FARANSSO: I think it would be a good
3 time for a break.

4 MS. HALPERN: I'll see you back here
5 around 1:00.

6 (Lunch recess from 11:54 a.m. to
7 1:02 p.m.)

8 Q. (By Ms. Faransso) Senator Fraser, you referred
9 before lunch to testimony and research that the
10 Committee received during consideration of the various
11 Voter ID bills.

12 A. Uh-huh.

13 Q. Did any of that testimony or research show that
14 legislation allowing the use of non-photo identification
15 would not prevent in-person voter fraud?

16 A. I'm glad you asked me that question because at
17 lunch, I refreshed my memory and went back over data
18 that we had released. In 2010, there was a University
19 of Texas poll that was a strict photo ID -- the question
20 was asked about a strict photo ID and they broke it down
21 in both White, African-American and Hispanic, and it
22 showed overwhelmingly in any all three areas that a
23 strict photo ID was acceptable. Another poll was done
24 by Lighthouse just prior to the bill passing in the 2011
25 and actually the numbers had gone up considerably. So

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1 there had been at least one, maybe two polls by the
2 University of Texas on that, that were strict photo ID,
3 and they asked the question specifically about a strict
4 photo ID. So yes, there was considerable research done
5 about polling of Texas people on that issue.

6 Q. Thank you. And we may come back to those polls
7 later, but aside from the polls that showed what the
8 public thought about Voter ID, did the testimony and
9 research show that legislation allowing the use of
10 non-photo ID would not prevent in-person voter fraud?

11 A. Well, any testimony came from the Democratic
12 party -- the National Democratic Party trying to make a
13 case that that was a case, but it actually was totally
14 inverse of what the public thought. Because the public,
15 when you asked the public what they thought of should
16 you have a photo ID, they were overwhelming in favor it.
17 So, yes, it was testimony, but the testimony came from
18 either advocacy groups working against it or the DNC.

19 Q. So just to be clear, there were no facts that
20 were raised showing that the use of non-photo ID would
21 not prevent in-person voter fraud?

22 MS. HALPERN: Objection, assumes facts not
23 in evidence.

24 A. I think I just said that there was polling. We
25 did not have in it place so you didn't have any actual

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1 elections that had happened, but we asked the public,
2 "Do you believe that it would increase the integrity of
3 the ballot box if you used a strict photo ID," and the
4 polling showed that the numbers were very high, in some
5 cases up into the upper 80s. One poll conducted in 2011
6 right before my bill was passed, showed that it was 83
7 percent of African-Americans and 86 percent of Hispanics
8 believed that a photo ID bill should be passed.

9 Q. (By Ms. Faransso) And just to confirm for the
10 record something we discussed a bit earlier, none of
11 those polls asked what the views the responders would be
12 with respect to a strict photo ID law if they knew that
13 that law would disproportionately impact minority
14 voters, correct?

15 MS. HALPERN: Objection, assumes facts not
16 in evidence. Objection, compound. Objection,
17 misleading.

18 You can try to answer.

19 A. There's a -- you know, you're -- you know,
20 there possibly may have been polls about that. If you
21 have that, you'd been glad to show them to me.

22 The polls that I Googled, the polls that I
23 found, the polls that were delivered to me by opponents,
24 all were in reference to a strict photo ID, and that
25 those were the -- obviously, the direction that the

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1 public was encouraging us to go.

2 Q. (By Ms. Faransso) Let me ask a slightly
3 different question. Did any of the testimony or
4 research that you've been referring to show or
5 demonstrate that allowing non-photo identification would
6 result in incidents of in-person voter fraud?

7 A. The answer is that the information we found
8 that the -- the best way to ensure the integrity of the
9 ballot box, to make sure the person was who they -- you
10 know, they said they were, was to have a photo ID.

11 Q. And what was that information?

12 A. Testimony from the public and polling of asking
13 the public if they thought that was a -- you know, the
14 best way.

15 Q. So your basis for thinking about the inclusion
16 of non-photo ID would result in in-person voter fraud
17 were polls asking the public what they thought about
18 voter ID?

19 A. You're answering your own question.

20 Q. So that's a yes?

21 A. You want to ask that -- no, that's not a yes at
22 all. If you want to ask me a question instead of a
23 compound question, you know -- the public, when asked,
24 do you think that the ballot box, integrity of the
25 ballot box would be improved by having a strict photo

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1 ID, the answer was an overwhelming yes, in some cases,
2 as high as 88 percent.

3 Q. Thank you for that testimony. Other than the
4 polls, putting aside the polls, were there any other
5 facts showing that allowing non-photo ID in a Voter ID
6 bill would result in incidents of voter fraud?

7 A. Well, there are multiple studies that have been
8 done all the way back to 2000. There were -- a study by
9 the University of Missouri, there was a study by the
10 University of Delaware, there's a study by the Heritage
11 Foundation, studies by the Baker Carter group, all
12 showing that a photo ID would improve the integrity of
13 the ballot box, and in fact, the implementation of a
14 photo ID bill would not lower turnout in an election.

15 Q. And none of those studies looked at data in
16 Texas, correct? They looked at other states?

17 A. There had been no elections in Texas at the
18 time those studies would have been done because we
19 didn't implement the bill -- we passed the bill in 2011.
20 It wasn't implemented until last year.

21 Q. But those studies, for example, did not look at
22 what percentage of the population in Texas may or may
23 not possess photo identification required by Senate Bill
24 14?

25 A. The data that they had to look at was the

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1 implementation of states that -- where it had been
2 implemented and the turnout and results of the
3 elections. And, you know, they -- they projected
4 that. There was no elections held in Texas with a
5 strict photo ID until 2013.

6 Q. Thank you. We talked a bit about this earlier
7 today, but do you recall that Senate Bill 362 permitted
8 photo IDs issued by state and federal agencies or
9 institutions?

10 A. Yes.

11 Q. Are you aware that Indiana and Georgia's photo
12 ID laws also include photo ID issued by state or federal
13 agencies or institutions?

14 A. I'm sorry, I'm not -- not -- I would not say
15 that I know that.

16 Q. Are you aware that Senate Bill 14 does not
17 include photo identification issued by state or federal
18 agencies or institutions?

19 A. I would disagree with that.

20 Q. And why would you disagree with that?

21 A. Is a passport issued by the state or federal
22 government? Is a driver's license issued by the state
23 government? So IDs by state and federal government are
24 approved as identification for Senate Bill 14.

25 Q. And that's fair. Let me clarify my question

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1 then. I'm referring specifically to the provision we
2 looked at earlier this morning in Senate Bill 362 that
3 read that, "A valid identification card that contains a
4 person's photograph and is issued by an agency or
5 institution of the federal government or an agency,
6 institution or political subdivision of the state was
7 included in Senate Bill 362." And there is no parallel
8 provision in Senate Bill 14, is there?

9 A. As you're doing in your questions, clarifying,
10 we clarified in Senate Bill 14 specifically what federal
11 IDs and what state IDs would be acceptable to be used
12 for identification to make it for the ease of the poll
13 worker and the voter knowing what the --

14 (Interruption by teleconference recorded
15 message.)

16 Q. (By Ms. Faransso) Did you finish your answer?

17 A. Well, I was entertained by the phone.

18 Q. Please do finish.

19 A. I was finished.

20 Q. Okay. So is it a fair statement to say that
21 Senate Bill 14 narrowed the state or federal issued
22 forms of ID that were acceptable?

23 A. No, that's your statement. Senate Bill 14
24 clarified what federal agencies and what state agencies
25 would be both allowed to issue identification, and if we

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1 were issuing a state ID, who would issue it and the
2 parameters it would be issued under, which it is, as you
3 know, free.

4 Q. So Senate Bill 14 clarified which state- or
5 federal-issued ID would be acceptable?

6 A. Yes.

7 Q. You mentioned that Senate Bill 14 clarified
8 that set of identification because you thought that that
9 would be for the ease of the voters, correct?

10 A. And poll workers.

11 Q. And poll workers. Specific to voters, why
12 would it be easier on voters to have a narrower set of
13 identification?

14 A. It's clear whenever they go into to vote of
15 what an acceptable form of ID would be.

16 Q. Would it be easier for a voter who did not
17 possess one of the forms of identification stipulated in
18 Senate Bill 14?

19 A. It would be clear to that voter.

20 Q. It would be clear to that voter that they did
21 not possess that form of identification?

22 A. It would be clear to them what forms of
23 identification are acceptable.

24 Q. Would it be easier for that voter to then cast
25 a vote?

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1 A. You're trying make me determine what someone's
2 mind that I haven't met what is and is not. That's
3 subjective.

4 Q. Senate Bill 14 list of acceptable
5 identifications includes driver's license expired no
6 earlier than 60 days before the date of presentation; is
7 that correct? We can take a look at the bill if that
8 would refresh your recollection.

9 A. Please.

10 Q. Okay. Let's actually take a look at the final
11 version of the bill.

12 (Exhibit 16 marked for identification.)

13 Q. (By Ms. Faransso) Senator, you've been handed
14 --

15 MR. CLAY: I'm sorry, what number are we
16 on?

17 MS. FARANSSO: 16.

18 Q. (By Ms. Faransso) You've been handed what has
19 been marked as Exhibit 16. And this is the final signed
20 version of Senate Bill 14. Do you see that?

21 A. I do.

22 Q. Okay. And if you could, please turn to Page
23 10 -- actually, I'm sorry. If you could turn to Page 9,
24 and under Documentation of Proof of Identification, in
25 Section 63.0101, Paragraph 1 reads, "A driver's license,

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1 election identification" --

2 A. I'm going to have to stop you. I'm sorry, I
3 was reading. I was reading the bill. So if you will
4 start your question again.

5 Q. Sure, sure. Why don't you --

6 MS. HALPERN: It seems to work better if
7 you let him just read the thing you're going to ask him
8 about rather than --

9 MS. FARANSSO: I was just about to say
10 that.

11 Q. (By Ms. Faransso) Why don't you just read
12 Paragraph 1 under Section --

13 A. I was reviewing the bill to make -- see what
14 you were going to ask me.

15 Q. Sure. And I'm only going to ask you about this
16 paragraph, so.

17 A. Okay.

18 Q. If you would like to look at Paragraph 1, under
19 Section 63.0101 on Page 9.

20 A. Okay. Paragraph Number 1 or the first
21 paragraph?

22 Q. The -- Paragraph Number 1.

23 A. Okay. Okay.

24 Q. Is it fair to say that Senate Bill 14 included
25 driver's license that had been expired no earlier than

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1 60 days before the date of presentation?

2 A. Yes.

3 Q. Do you recall that Senate Bill 362 permitted
4 the use of driver's license that had been expired up to
5 two years before the date of presentation?

6 A. Are you asking me am I familiar with that?

7 Q. Do you recall?

8 A. No.

9 Q. Would you like to see the bill to verify that?

10 A. Sure.

11 Q. Okay.

12 MS. FARANSO: Can I get Tab 8, please?

13 Q. (By Ms. Faransso) We're actually going to look
14 at the engrossed version of Senate Bill 362.

15 (Exhibit 17 marked for identification.)

16 Q. (By Ms. Faransso) And this time I'm going to
17 ask you to turn to Page 5. And at the very bottom of
18 the page, you will see Paragraph 1 under Section
19 63.0101. If you could take a look at that paragraph,
20 please.

21 A. Okay.

22 Q. And so is it fair to say that Senate Bill 362
23 permitted the use of driver's licenses that had been
24 expired up to two years before the date of presentation?

25 A. The bill as filed and passed at the Senate,

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1 yes, had that provision.

2 Q. Okay. Do you recall considering whether to
3 allow in Senate Bill 14 the use of driver's licenses
4 that had been expired for more than 60 days?

5 A. Let me clarify that the question you're about
6 to ask, the -- in 362, I was not in favor of the
7 provision that had the expiring for two years, and the
8 intent was to change that in the House, and the bill
9 coming from -- in the House. So in 14, in the bill that
10 we filed, it didn't have the provision, but by one of
11 the amendments, we added to allow for the expiration for
12 60 days after -- they could vote after 60 days after the
13 expiration.

14 Q. Okay. And --

15 A. And that was a compromise, I believe, by an
16 amendment that was offered by a Democrat Senator.

17 Q. Okay. Are you aware of any facts that would
18 support the decision not to allow driver's licenses that
19 had been expired for more than 60 days?

20 A. Let me explain again. It was an amendment
21 offered by a Democrat Senator. Now, in the mode of
22 compromise, we included that provision into the bill.

23 Q. But are you aware of any facts that would
24 counsel against allowing driver's licenses that had been
25 expired for more than 60 days?

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1 A. Again, the bill as -- that we filed, didn't
2 have any -- address expirations. An amendment was
3 offered on the Floor and we accepted that amendment,
4 actually put that amendment into the Conference
5 Committee report in the mode of compromise.

6 Q. Would have you been opposed to an amendment
7 that allowed a driver's license that had been expired
8 greater than 60 days?

9 A. It was suggested that, in the mode of
10 compromise, we added an amendment that would put into
11 the bill, and that's what we accepted.

12 Q. I'm asking you personally whether you would
13 have been opposed to inclusion of a provision allowing
14 driver's licenses that had been expired for more than 60
15 days?

16 A. And you're doing a hypothetical of something
17 that, you know, didn't happen.

18 Q. Why would a validly issued but expired driver's
19 license fail to proof one's identity?

20 A. If you look at my driver's license, my looks
21 have changed a lot over the last ten years, and if you
22 give me another ten years, it will change a lot more,
23 and they probably couldn't recognize me from my driver's
24 license twenty years before. And I believe that was the
25 data that -- the testimony we had, is that a driver's

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1 license in Texas lasts for ten years, and ten years,
2 your looks change a lot.

3 Q. I am familiar with the ten year length of time
4 for driver's licenses as I previously had one myself.

5 Do you think with respect to two years
6 that the statement you had just made is true, in that an
7 ID that had been expired for two years would not prove
8 one's identity?

9 A. Again, the driver's license of the amendment --
10 the amendment was asked for by a Democratic Senator and
11 in the mode of compromise, we accepted that provision,
12 which was the 60 days.

13 Q. Under Senate Bill 14, student identification is
14 not an acceptable form of ID; is that right?

15 A. That is correct.

16 Q. What was the rationale behind excluding student
17 IDs from Senate Bill 14?

18 MS. HALPERN: Objection, legislative
19 privilege.

20 You can answer.

21 A. I think the easiest explanation is if we had a
22 computer in front of us and we Googled student IDs in
23 Texas, the ones that come up are pretty amazing because
24 with today's technology, you can make us an ID from
25 anything by going to Kinko's. And we found that where

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1 there were numerous IDs on the market that people had
2 created -- a University called Monsters University or
3 Tom's University -- and they would create their own ID.
4 And we realized that if there wasn't a uniform standard
5 for identification, that we could not control the
6 identification mechanisms going into a polling place and
7 would confuse poll workers.

8 Q. (By Ms. Faransso) Did you give any
9 consideration to options for requiring, for example,
10 expiration dates on student IDs?

11 A. Unfortunately, there's a lot of identification
12 cards. I actually just noticed there's one right here
13 on Linda's -- could I see your card? This is a very
14 classic -- it was issued by the State of Texas, it has
15 her picture on it and this allows her to get in, but
16 there is no identification anywhere on the card.
17 Unfortunately, we found that to be the case on a lot of
18 cards that were issued. And without an identification
19 -- an expiration date, we ran into the same problem we
20 had with driver's licenses.

21 Q. So specifically with respect to student
22 identification, did the Senate or you personally give
23 any consideration to ways of making student
24 identification more uniform across the state of Texas?

25 A. We spent extensive time looking at that issue

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1 trying to determine if there's a way to do it, and we
2 found that if someone -- you couldn't restrict someone
3 from let's say the University of Texas or in a private
4 college like Austin College in Denton where they -- was
5 not a state institution. We didn't know who was issuing
6 those cards. A lot of cases, we didn't know the
7 university who it represented and there was no way to
8 standardize it. And we made an agreement that that was
9 probably not an acceptable way and it would actually
10 confuse the process. And so we eliminated student IDs
11 from the list.

12 Q. You mentioned the difficulty of standardizing
13 IDs from public -- from private institutions of higher
14 education. Did you give any consideration to
15 standardizing ID from public institutions of higher
16 education in Texas?

17 A. Actually, we did, but we get into the same
18 Kinko's problem, is that you could go there this
19 afternoon and make your own ID very, you know, easily at
20 Kinko's. We realized that the -- in Texas, we came up
21 with a very sophisticated process with the driver's
22 licenses with multiple things that cannot be replicated
23 and will keep people from either changing or duplicating
24 a Texas driver's license on an ID that is issued by the
25 Department of Public Safety.

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1 So, to ensure the integrity the ballot box
2 and make sure that an ID has been not been issued by an
3 unauthorized source, we chose to use the four sources
4 that we -- either the federal government of the
5 passport, federal government military ID, a -- the
6 handgun picture ID or an ID issued by the Texas driver's
7 license, the Department of Public Safety or an ID that
8 had been issued for voting were the acceptable forms.

9 Q. Senator, at the time you were drafting and
10 considering Senate Bill 14, were you aware of any
11 instances in Texas when a -- where a forged student ID
12 had been used for in-person voter fraud?

13 A. I'm not sure how to answer that because that
14 was not information we ever asked for. I am very, very
15 aware of the fact that it's easy to make a fake ID to
16 buy liquor and/or to do other things, so we -- we were
17 aware that it was easy to do a forged ID. And we --
18 because of information we received from the Department
19 of Public Safety and the fact that we had an ID that was
20 very hard to forge or replicate, we felt like that was
21 the safest way to preserve the integrity the ballot box.

22 Q. But just to confirm, you had no factual
23 information as to whether a student ID had been used to
24 commit in-person voter fraud in Texas?

25 A. That testimony, to my knowledge, I don't know

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1 that it was ever asked.

2 Q. Okay. Are you aware of any such instances of
3 student ID being used to commit voter fraud anywhere in
4 the country?

5 A. I don't know that that information has ever
6 been delivered to me.

7 Q. Okay. And you did not ask for any such
8 information with respect to Texas or other states,
9 correct?

10 A. No. We were moving toward making sure that we
11 do IDs that could not be forged.

12 Q. Did you conduct any analysis as to whether
13 college students were more or less likely to possess the
14 forms of identification that were listed in Senate Bill
15 14?

16 MS. HALPERN: Objection, vague.

17 A. Actually, there was a lot of discussion about
18 who possessed driver's licenses, who had ID, who had
19 passports, who had concealed handgun permits, and yes,
20 it was discussion about the age of the people and who
21 had what, and we determined that actually, the younger
22 people were more likely to have the -- all the forms of
23 ID that could be used.

24 Q. (By Ms. Faransso) Did that --

25 A. And a student ID was not needed.

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1 (Interruption by teleconference recorded
2 message.)

3 Q. (By Ms. Faransso) Did that research that
4 pertained to the younger population break down the
5 percentages of the younger population that possessed ID
6 by race?

7 A. To my knowledge, not -- no.

8 Q. Did you -- did the Senate Committee receive any
9 testimony that Texas -- Texas driver's licenses or
10 personal identification cards cannot be replicated?

11 A. The answer would be no on that because I think
12 anything in today's technology can be replicated. We
13 believe we have one of the most safeguards in our Texas
14 driver's license of virtually any state, but in today's
15 technology, I suspect anything could be replicated.

16 Q. Did the Committee receive specific testimony
17 regarding the basis for why the Texas IDs were
18 particularly secure?

19 A. Yes.

20 Q. And what was that testimony?

21 A. I just gave you the testimony. That we -- they
22 showed me at least six different places on the Texas ID
23 that is a specific marking that makes it extremely
24 difficult to replicate not unlike the marking they put
25 on a dollar bill to keep it from being counterfeited.

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1 Q. What about the concealed handguns license, did
2 you receive any testimony about the difficulty of
3 replicating that ID?

4 A. Juan Hinojosa is a Democratic member, that I
5 worked very closely with, presented an amendment. He is
6 a -- both a carrier of the permit and a -- and he
7 carries a handgun all the time on the Floor. And he
8 asked that that amendment be put into the bill, and I
9 accepted his amendment.

10 Q. And was there any testimony about the
11 difficulty of replicating that kind of ID?

12 A. That permit I believe is issued by the
13 Department of Public Safety, so we believe that same
14 replication -- in Texas, if it's issued by them, we
15 believe that we have that same ability.

16 Q. If it's issued by the Department of Public
17 Safety?

18 A. Yeah, I'm assuming it is, and I -- I would not
19 make the representation because I do not know that for
20 sure.

21 Q. Senator, do you recall that Senate Bill 14
22 includes as of a form of permissible ID, a United States
23 Citizenship Certificate that contains a person's
24 photograph?

25 A. Okay, I'm sorry, you're going to have to ask

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1 that again.

2 Q. Are you aware that Senate Bill 14 includes as a
3 form of permissible ID a citizenship certificate from
4 the United States --

5 A. Yes.

6 Q. -- that includes the person's photograph?

7 A. Yes.

8 Q. Do those citizenship certificates expire?

9 A. I'm sorry, I don't know the answer to that.

10 Q. If you could, take a look at Senate Bill 14, if
11 you have it in front of you.

12 A. Okay.

13 Q. And turn to Section 20, which is on Page 13.

14 A. Got it.

15 Q. And for the record, we're using the final
16 signed version of Senate Bill 14.

17 Section 20 pertains to the Election
18 Identification Certificate; is that right?

19 A. Appears to.

20 Q. I might refer to that as EIC so bear with me.

21 This provision regarding the Election
22 Identification Certificate was added to Senate Bill 14
23 during Conference; is that right?

24 A. That is -- the best of my recollection, yes.

25 Q. Okay. Did anybody ask you to include this

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1 provision?

2 MS. HALPERN: Objection, legislative
3 privilege.

4 A. This actually was in the development of the
5 bill as it has continued to be since it was implemented.
6 We look for ways to ease the implementation to the
7 public. Two of the things that we were trying to make
8 sure that we were supplying to the public, if they did
9 not have an ID, we wanted to make it easy to get an ID
10 and we wanted to be -- the cost of the ID to be very low
11 or free. And this was a result of that.

12 Q. (By Ms. Faransso) Why -- what was the -- why
13 specifically were you looking for ways to ease the
14 implementation of the bill to the public?

15 A. Because if someone wanted to vote, we wanted to
16 make sure that we made it as easy as possible for them
17 to meet the parameters of the photo ID requirement.

18 Q. Was it your understanding that to be lawful,
19 Senate Bill 14 needed to offset the burdens on the
20 voters by providing this EIC?

21 A. I'm sorry, I didn't understand what you said.

22 MS. FARANSSO: Can you please read back
23 the question.

24 (Requested portion was read back by the
25 reporter.)

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1 A. No.

2 Q. (By Ms. Faransso) And why not?

3 A. We believed that the bill we were passing was
4 both constitutional and would pass the preclearance
5 standards, but in order -- as kind of the Texas way, we
6 wanted to continue doing everything we could to make it
7 as easy as possible, so we added both the identification
8 card availability and the free card -- making it free as
9 part of the bill.

10 Q. Okay.

11 MS. HALPERN: Can we get a time check?

12 THE COURT REPORTER: (Calculating.) 3
13 hours and 10 minutes.

14 (Exhibit 18 marked for identification.)

15 Q. (By Ms. Faransso) Senator, you have now been
16 handed what has been marked as Exhibit 18. Does this
17 document look familiar to you?

18 A. No.

19 MS. FARANSSO: I'll note for the record
20 that this document is highly confidential.

21 Q. (By Ms. Faransso) Senator, does this appear to
22 be Talking Points that you used in the consideration of
23 Senate Bill 14?

24 A. This appears to be Talking Points that I could
25 have used.

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1 Q. Do you believe that Ms. McCoy would have been
2 the most likely person to have drafted these Talking
3 Points for you?

4 A. Yes.

5 Q. And would you have reviewed this draft?

6 MS. HALPERN: Counsel, let me just --

7 A. The answer is no.

8 MS. HALPERN: Let me just note for the
9 record that the numbers here are consecutive but I'm not
10 sure this is one document.

11 MS. FARANSSO: It was how it's produced.
12 So we're just using documents as they were produced so
13 as to cut documents, if that --

14 A. So if you're going to ask that question that --
15 you appear to have three or four or maybe more documents
16 that are separate and that --

17 Q. (By Ms. Faransso) I'm only going to ask you a
18 few questions for right now. If I get to the pages, we
19 can deal with those pages at that moment that I do that.

20 MS. HALPERN: All right. With respect to
21 identification, though, I'm going to ask you to have him
22 identify every page.

23 MS. FARANSSO: That's fine. That's
24 certainly fine.

25 MR. CLAY: Have we sealed the entire

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1 deposition?

2 MS. HALPERN: No.

3 MS. WESTFALL: No, we're going to
4 objection by objection and document by document.

5 MR. CLAY: Okay.

6 MS. WESTFALL: But the whole thing will be
7 designated Highly Confidential and we can -- counsel can
8 work out later what's confidential and what's not
9 confidential.

10 MS. HALPERN: And any time there is a
11 statement on the record related or any question about a
12 highly confidential document, that portion and that
13 discussion is supposed to be sealed.

14 MR. CLAY: Okay.

15 MS. WESTFALL: We already went over that.

16 MR. CLAY: Okay, I just wanted to know.

17 Q. (By Ms. Faransso) So again, Senator Fraser,
18 just to confirm, this appears to be Talking Points that
19 you could have used in preparing for the debate on
20 Senate Bill 14, correct?

21 A. (Witness nods head yes.)

22 Q. Okay. If you would just turn to Page 2, which
23 is the back of that first page, and in bolded letters
24 there, it says, "Compliance with U.S. Supreme Court."
25 Do you see that?

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1 A. Yes.

2 Q. And there are two bullets underneath there.

3 I'm looking at the second bullet, which reads, "It
4 complies with the Supreme Court decision because it
5 offsets burdens on voters by..." and then it provides a
6 list. Do you see that?

7 A. Can I -- you're going to the second one?
8 You're skipping over the first?

9 Q. Yes, I'm skipping over the first and going to
10 the second bullet.

11 A. Okay. You don't want to talk about the first?

12 Q. Not right now.

13 A. Okay. I like the first better. Go.

14 Q. Looking at second bullet, which reads -- again,
15 "It complies with the Supreme Court decision because it
16 offsets burdens by..." The first sub-bullet says,
17 "Providing access to free photo ID cards." Do you agree
18 with this statement?

19 A. No, I don't. I can't verify that because I
20 don't know that the Supreme Court specifically said that
21 we had to provide free photo ID cards.

22 Q. Do you know why this would have been included
23 in these Talking Points?

24 A. Probably should have asked Ms. McCoy that.

25 Q. Do you recall debates in the Senate pertaining

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1 to the idea that the EIC would offset the burdens on
2 voters imposed by Senate Bill 14?

3 A. Clarify debate. Are you talking about debate
4 on the Floor?

5 Q. Yes.

6 A. I don't remember that, no.

7 Q. Are you aware of any analysis to determine the
8 burdens of acquiring an EIC while Senate Bill 14 was
9 being considered?

10 A. A study?

11 Q. Any analysis: Study, research, any testimony
12 that was put forward on the Floor.

13 A. We had testimony by the Department of Public
14 Safety and we also -- not only in the testimony but also
15 after and during the Conference Committee instructing
16 the Department of Public Safety or asking them ways that
17 we could ease the burden on someone in acquiring it. So
18 the answer would yes.

19 Q. Okay. And are you familiar with the underlying
20 documentation that's required to obtain an EIC?

21 A. I don't know where you're headed so I guess I'd
22 say no.

23 Q. Are you aware that in order to obtain an EIC,
24 one must prove -- show proof of citizenship and
25 identity?

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1 A. I am aware of that, yes.

2 Q. Are you aware that there are fees associated
3 with obtaining the documentation, the underlying
4 documentation required to obtain an EIC?

5 A. Yeah, you're going to have that ask that again,
6 I didn't get what you said.

7 Q. Are you aware that there are fees associated
8 with obtaining the underlying documentation required to
9 obtain an EIC?

10 MS. HALPERN: Objection, assumes facts not
11 in evidence.

12 A. Why don't you explain what you're asking and
13 I'll tell you whether I know it or not.

14 Q. (By Ms. Faransso) Are you aware, for example,
15 that an individual seeking to obtain an EIC must provide
16 proof of citizenship?

17 A. Yes.

18 Q. And are you aware that one way to prove
19 citizenship is by showing one's birth certificate?

20 A. Yes.

21 Q. And are you aware that at the time that Senate
22 Bill 14 was passed, a birth certificate cost \$22 in the
23 state of Texas?

24 A. And are you also aware that the -- that
25 provision had been removed and now it's either free --

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1 the most a birth certificate can cost is \$3 now, but not
2 always. In a lot of cases, it is free. One of the
3 provisions we changed.

4 Q. But that was not the case when Senate Bill 14
5 passed, correct?

6 A. There was instruction that had been given that
7 -- to move toward making sure that was done. So by the
8 implementation of the law, by the time the first
9 election was held, that was in place.

10 Q. Who was that instruction given to?

11 A. To -- I believe it's the health service, I
12 believe, is the one that does birth certificates.

13 Q. So the --

14 A. But it's both the Department of Public Safety
15 for a driver's license and the ID cards and then the
16 birth certificates went through the Texas Health
17 Services, I believe, is the name of the agency.

18 Q. So Texas Health Service -- Health Services, as
19 an agency, was entrusted with ensuring that a birth
20 certificate did not cost \$22 by the time the first
21 elections rolled around?

22 A. That is correct.

23 Q. Are you aware that approximately 80 counties in
24 Texas lack DPS offices?

25 A. I'm not -- no, I'm not aware.

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1 Q. Were you aware of that at the time that Senate
2 Bill 14 was being debated?

3 A. There was discussion on the Floor of -- by DPS
4 and the question asked about the availability of
5 offices, and so that -- I did listen to that discussion,
6 yes.

7 Q. During consideration of Senate Bill 14, did you
8 conduct or review any analysis of the distances that
9 voters living in counties without a DPS office would
10 have to travel to get to the nearest DPS location?

11 A. Yes.

12 Q. And what were your findings?

13 A. That Texas is a very large state with a very
14 sparse population and -- in a lot of the state, and that
15 we have done the best job within -- that's possible in
16 order to make be sure the DPS offices available -- I
17 know there's a lot of people interested in getting a
18 driver license -- and that because of the sheer size of
19 the state, it was impossible to have a DPS office
20 everywhere.

21 MS. FARANSSO: If you don't mind, if we
22 could go off the record for a moment to reopen the line.

23 MS. HALPERN: Actually, before we go off
24 the record, I want to make a statement for the record,
25 which is this: This Exhibit 18, I stated earlier that I

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1 was concerned that it was multiple documents stuck
2 together and I'm not questioning how you received it,
3 but we have another exhibit, Exhibit 9, which is a
4 transmittal e-mail from Bryan Hebert, and to that are
5 attached three documents, one of which is identical to
6 TX 00009466.

7 MS. FARANSSO: Counsel, if I may, it's not
8 impossible that certain documents, Talking Points for
9 example, would be attached to multiple documents. So
10 that may explain why an identical document is attached
11 to two documents --

12 MS. HALPERN: Well --

13 MS. FARANSSO: -- that have been used as
14 any exhibits in this deposition.

15 MS. HALPERN: Well, but the point is, it
16 doesn't mean that it's one single document. I also know
17 something about how the documents were produced in this
18 case. We had testimony from Ms. McCoy that everything
19 went in a box. And I think in order to produce these
20 documents to you, everything was taken out of the box.
21 How it was arranged in the box is not clear to me, and I
22 just -- I'm not convinced that Exhibit 18 is in fact a
23 single document. I very strongly believe it is not a
24 single document, and I just wanted to say that for the
25 record.

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1 MS. FARANSSO: Thank you. And for the
2 moment, I don't intend to ask questions about the pages
3 you are referring to, so hopefully it will be a
4 non-issue for this deposition.

5 MS. HALPERN: Well, and I want to make it
6 clear that his identification is just with respect to
7 the pages that you specifically questioned him about.

8 MS. FARANSSO: That's fine.

9 MS. HALPERN: All right.

10 (Pause to re-establish teleconference
11 connection with Mr. Derfner.)

12 Q. (By Ms. Faransso) Senator, before we went off
13 the record, you had referenced the sheer size of the
14 state, which I am well aware of. Is it fair to say
15 based on the sheer size of the state and the fact that
16 we could not -- Texas could not locate a DPS office in
17 every county, that some voters living in more remote
18 areas would need to travel farther distances than others
19 to obtain an EIC from the nearest DPS location?

20 A. I'm going ask you to ask that again --

21 MS. FARANSSO: Can you please read it
22 back.

23 A. -- you -- very long, multiple question.

24 MS. FARANSSO: Can you please read it
25 back.

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1 (Requested portion was read back by the
2 court reporter.)

3 A. You're making an assumption that the people in
4 that area don't already have a driver's license and have
5 identification. That our testimony showed that the
6 numbers are in the high 90s percent of people, eligible
7 voters, that have a driver's license. That testimony
8 was received during the bill. But if someone did not
9 have that, they could also have the other choice of
10 either voting by mail or, obviously, if they had to
11 travel to it, they would be traveling to the same place
12 the driver's licenses are issued.

13 Q. (By Ms. Faransso) Are you aware that some
14 voters prefer to vote in person rather than by mail?

15 A. Yes.

16 Q. During consideration of Senate Bill 14, did you
17 conduct or review any analysis regarding the
18 availability of public transit to DPS offices throughout
19 the state?

20 A. There was much discussion in the laying out of
21 the bill about public transportation, who would have --
22 what percentage of the population would be able to
23 access it. And I think the testimony we heard is that
24 the majority, the overwhelming majority of the state was
25 served by public transportation that was available to

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1 get to DPS offices.

2 Q. And in what form was that public transportation
3 that you were looking at?

4 A. Public transportation.

5 Q. What kind of public transportation?

6 A. The testimony was about public transportation.
7 I don't know it was broken out per.

8 Q. Did you conduct any analysis regarding the
9 hours and days during which DPS offices are open?

10 A. Much discussion during the bill about asking
11 questions about times that they're open. We were very
12 pleased to find out that in most cases across the state,
13 DPS offices were open up to 7 o'clock. So someone
14 getting off work at 5 could go to the DPS office up
15 until 7.

16 Q. What about weekend hours?

17 A. There were some available on weekends, not as
18 much as late hours during the week.

19 Q. When you say most DPS offices were open to
20 7 p.m., do you know exactly what percentage of DPS
21 offices were open until 7 p.m.?

22 A. If I said most, I would like to retract that.
23 There were -- many offices were open. I don't know the
24 percentage.

25 Q. Do you know the location, generally speaking,

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1 across the state of which DPS offices were open past --
2 or open until 7?

3 A. I think my statement said that in areas of high
4 population. So the bulk of the population of the state
5 would have access to a DPS office that was open up until
6 7 o'clock.

7 Q. In areas of high population, okay.

8 Senator, would you agree that for some
9 voters, the farther they have to travel to obtain an
10 EIC, the less likely they are to obtain one?

11 MS. HALPERN: Objection, calls for
12 speculation.

13 A. Yeah, and I think you're speculating whether --
14 that same thought would be of whether they would get a
15 driver's license. If someone -- if they're in a remote
16 area, they chose to live in that remote area for a
17 reason and they understand that by living in a remote
18 area, there's challenges in getting groceries, getting a
19 driver's license, and it would be the same distance to
20 get a card. If they chose not to get an identification
21 card, they still have the right to vote by mail, which a
22 lot of people do exercise.

23 Q. (By Ms. Faransso) Would you agree that
24 obtaining a driver's license gives you additional
25 benefits beyond voting?

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1 A. Ask that again.

2 Q. Would you agree that obtaining a driver's
3 license gives you additional benefits beyond voting?

4 A. Yes. You get to drive a car.

5 Q. That's right. And would you agree that
6 obtaining an EIC is for the sole purpose of voting?

7 A. No, I think I disagree with that because I
8 believe the voter identification cards can be served as
9 identification for buying cigarettes, I'm assuming
10 riding an airplane. I think it is a state issued
11 identification. That is my understanding.

12 Q. That's your understanding. But the purpose of
13 an EIC is to permit an individual to vote, correct?

14 A. But that wasn't the question that you asked.
15 We're not talking about the purpose. You're saying
16 could it be used for something else, and it could be
17 used for other things. It's the same question you asked
18 about the driver's license, yes, it could be used for
19 other things.

20 Q. And for what things can an EIC be used for in
21 the state of Texas?

22 A. I believe -- for any type of identification
23 where a state ID should be issued, I believe it should
24 be able to be used.

25 Q. Do you believe that if a voter had to travel a

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1 hundred miles round trip to obtain an EIC, that that
2 would impact their decision as to whether to obtain an
3 EIC?

4 A. Once again, people in Texas that have chosen to
5 live in remote areas, by choosing to live there, they
6 understand that they would have to travel to receive
7 groceries, food, water, driver's license, and the
8 election identification.

9 Q. Do you believe that all people who live in
10 remote areas have decided to live in those remote areas
11 by choice?

12 A. I think -- I don't think you could say all on
13 anything because there's probably exceptions to every
14 rule.

15 Q. And do you believe that the choice of living in
16 a remote area should impact one's right to vote?

17 A. Everyone in remote areas have the right and
18 opportunities to vote if they either choose to get an
19 identification card. If they choose not to get one,
20 they can vote my mail.

21 Q. And I believe you -- I believe I asked you
22 before, but just to confirm for the record, there are
23 some groups of people who prefer to vote by -- in person
24 rather than by mail, correct?

25 MS. HALPERN: Objection, vague.

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1 A. I'm -- it's vague and I can't -- it's
2 subjective because I can't read the minds of people
3 living in remote areas.

4 Q. (By Ms. Faransso) Would you agree that a form
5 of identification is not free if it cost money to obtain
6 these underlying documents required to obtain that form
7 of identification?

8 A. It's very clearly not free if it cost money,
9 but the state of Texas has done everything they can to
10 make it either free or as least expensive as possible.

11 Q. Would you agree that a form of identification
12 is not free if it cost money to travel to obtain that
13 form of identification for the sole purpose of voting?

14 A. Obviously, if you travel there, there is a cost
15 to travel.

16 Q. Did you conduct any analysis of the burdens of
17 obtaining an EIC that would fall on low income voters?

18 A. Once again, we're back to the study issue of
19 what you consider study, and lot of that came from
20 testimony. The district that I represent is I believe
21 still the third poorest in the state. I traveled
22 exclusively -- extensively across my district and asking
23 questions, and the feedback I had from my district and
24 the feedback we had from testimony is that the, you
25 know, people would be able to get identification.

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1 Q. Did -- when you were discussing with your
2 constituents this issue, did you discuss the cost
3 involved in obtaining the underlying documentation to
4 obtain an EIC?

5 MS. HALPERN: Objection, legislative
6 privilege.

7 A. The answer is yes. A lot of that would be me
8 asking questions and me also responding, making sure
9 that we were doing everything we could to either make
10 the card free and/or driver's license free or very
11 inexpensive or birth certificates free or very
12 inexpensive.

13 Q. (By Ms. Faransso) Did you conduct any analysis
14 of the burdens of obtaining an EIC that a low income
15 voter would experience in taking off work to obtain an
16 EIC?

17 A. Once again, the question that was asked was,
18 how often -- or what areas and what -- how much we
19 served in the areas where they would have offices open
20 until 7, and I was pleasantly surprised at the number
21 and availability of people that would be able to access
22 offices that were open until 7.

23 Q. But not all offices were open until 7, correct?

24 A. The majority of Texas in high population areas,
25 there is access up to 7.

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1 Q. In high population areas, okay.

2 Senator, are you aware of the racial
3 makeup of the low income population in Texas?

4 A. No.

5 Q. When the EIC provision was proposed and being
6 considered, some Senators raised concerns about the
7 burdens associated with obtaining an EIC. Do you recall
8 that testimony?

9 A. No.

10 Q. Do you recall that some Senators raised
11 concerns that such burdens would prevent voters from
12 exercising their right to vote?

13 A. No. Because I believe everyone in Texas has
14 the ability and the right to vote because of mail-in
15 ballots.

16 Q. Do you -- do you believe that for a person who
17 would prefer to vote in person -- in-person and who does
18 not possess one of the forms of ID required by Senate
19 Bill 14, that that person might experience burdens in
20 obtaining an EIC to vote?

21 MS. HALPERN: Objection, calls for
22 speculation.

23 A. It would be impossible for me to project each
24 person. But again, it -- our research showed by the
25 testimony that an extremely high population of Texas has

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1 -- already has identification, and interestingly since
2 then, the data we looked at and the number of people
3 that have gotten the free card, the percentage is
4 extremely low because people already had these others
5 forms of identification.

6 Q. (By Ms. Faransso) Could there be other reasons
7 to explain the low percentage of people who have sought
8 to obtain an EIC?

9 A. Would you like to suggest what those could be?

10 Q. Could it be a low percentage of people who have
11 sought to obtain an EIC be explained by the difficulty
12 involved in obtaining such an identification?

13 A. Or it could be that they chose to vote my mail.

14 Q. Implementation of the EIC program was left to
15 the Department of Public Safety; is that correct?

16 A. Repeat the question, please.

17 Q. Implementation of the EIC program was left to
18 the Department of Public Safety?

19 A. Yes.

20 Q. And after SB 14 was enacted, did your office
21 have any communications with DPS about the rollout of
22 the EIC program?

23 A. Yes.

24 Q. Do you know the number of people who have
25 obtained an EIC in the state?

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1 A. I could not give you the accurate number, no.

2 Q. Senator, do you recall during the debate in the
3 Committee of the Whole on SB 14, responding, "I am not
4 advised to numerous questions"?

5 A. Would you ask your question again?

6 MS. FARANSSO: Can you please read it
7 back?

8 (Requested portion was read back by the
9 court reporter.

10 A. Yes.

11 Q. (By Ms. Faransso) What does the answer "I am
12 not advised" mean?

13 A. It means that I don't have -- I do not have
14 sufficient information to answer your question.

15 Q. Do you recall being asked questions about the
16 potential impact of Senate Bill 14 on minority voters?

17 A. No, I do not remember the specific question.

18 Q. What was your response -- actually, can you
19 hand me Tab 20, please?

20 (Exhibit 19 marked for identification.)

21 Q. (By Ms. Faransso) Senator, you've been handed
22 what has been marked Exhibit 19. Does this document
23 look familiar to you?

24 A. No.

25 Q. Does this appear to be the transcript of the

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1 debate during the Committee of the Whole on Thursday
2 January 25, 2011?

3 MS. HALPERN: Counsel, can we clarify that
4 its an excerpt only and that the pages jump around
5 and are not --

6 MS. FARANSSO: I was just about to do
7 that.

8 MS. HALPERN: Like the pages from --

9 MS. FARANSSO: Yes, as with the other
10 transcripts, I was about to say this is an excerpt.

11 A. Okay.

12 Q. (By Ms. Faransso) Okay. If you could turn to
13 Page 170, labeled in the right-hand corner. If you'd
14 like to take a moment to review that page.

15 A. Okay.

16 Q. Okay. Having looked at this page, does this
17 refresh your recollection of being asked questions about
18 the potential impact of Senate Bill 14 on minority
19 voters during the debate in the Committee of the Whole?

20 MS. HALPERN: I'm sorry, can I have that
21 read back?

22 MS. FARANSSO: Sure.

23 (Requested portion was read back by the
24 court reporter.)

25 A. Are you waiting for an answer?

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1 Q. (By Ms. Faransso) I am.

2 A. No.

3 Q. You do not recall?

4 A. Did you ask if I recalled or?

5 Q. Does it refresh your recollection looking at
6 this page --

7 A. No.

8 Q. -- that you were asked questions about the
9 impact on minority voters of Senate Bill 14?

10 A. No.

11 Q. Do you recall that Senator West asked you
12 specifically, "Will the elimination of the government
13 documents as a form of ID disproportionately affect
14 African-Americans and Hispanics"?

15 A. If this is an accurate indication of what was
16 said, the paper says yes, that --

17 Q. Do you have any reason to doubt the accuracy of
18 this transcription of the record?

19 A. No.

20 Q. Do you see that you responded, "I am not
21 advised to Senator West's question"?

22 A. Yes.

23 Q. Why did you respond, "I am not advised"?

24 A. He asked me if the -- if the elimination of
25 government documents would disproportionately affect

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1 African-American and Hispanic. There had been a poll
2 taken less than a week before that asking Hispanics and
3 African-Americans if they were in favor of the passage
4 of a strict photo ID bill, and the percentages were in
5 the upper 80s that they responded that they were in
6 favor of the passage of a strict photo ID bill. So, the
7 answer is no.

8 Q. Were those responders asked whether they would
9 be in favor of a strict photo ID bill if it had the
10 effect of disproportionately impacting a percentage of
11 the minority population in Texas?

12 A. I think if you're asking a Hispanic or an
13 African-American and you know their ethnicity and you
14 asked them, "Are you in favor of an implementation of a
15 strict photo ID bill," and they say yes, you have to
16 assume they understand the -- that if they're being
17 asked, they understand the implication.

18 Q. Just to be clear, aside from the polls that
19 you've referenced, you didn't conduct any other studies
20 or review any other studies about what the impact of
21 Senate Bill 14 would be on minority voters in Texas,
22 correct?

23 MS. HALPERN: Objection, assumes facts not
24 in evidence.

25 A. You know, we've discussed this multiple times

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1 in questions asked today. You're using the word study
2 in a very broad sense. There was extensive testimony
3 for three different sessions, there were -- the time I
4 spent out in the field and across the state, there was a
5 -- studies that I pulled from the impact of elections in
6 others states and there were polls that were taken in
7 Texas asking people about the implementation of a strict
8 photo ID bill, and it was broke down by ethnicity. And
9 so the answer is yes, we did a lot of studying.

10 Q. (By Ms. Faransso) Do you think it would be
11 problematic if a Voter ID bill made it more difficult
12 for minority voters to participate in elections?

13 A. You're being subjective with the what-if
14 because the bill we were passing, we believed was not
15 disproportionately in effect, that they -- it was clear
16 that they were in favor of the passage and that the
17 implementation was -- would not -- as the Carter-Baker
18 study showed, not give any due burden on people for --
19 to meet the terms of.

20 Q. I'd like to move on to the debate on the
21 various amendments to Senate Bill 14.

22 MS. HALPERN: You want to take a break?

23 A. Sure.

24 MS. FARANSSO: Take a break.

25 (Recess from 2:07 p.m. to 2:20 p.m.)

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1 (Exhibit 20 marked for identification.)

2 Q. (By Ms. Faransso) Senator, you've been handed
3 what has been marked as Exhibit 20. Do you recognize
4 this document?

5 A. No.

6 Q. Does this appear to be the Senate Journal from
7 January 26, 2011?

8 A. I do have a question on this, this has got two
9 exhibit numbers, 174 and then --

10 MS. HALPERN: It was used in somebody
11 else's deposition, but 20 is the one you want to focus
12 on.

13 THE WITNESS: Okay.

14 MS. HALPERN: It was used with Bryan
15 Hebert.

16 THE WITNESS: Okay.

17 Q. (By Ms. Faransso) And so does this appear to be
18 the Senate Journal from January 26, 2011?

19 A. It does.

20 Q. And is the Senate Journal essentially a record
21 of events that occur on the Senate Floor?

22 A. Yes.

23 Q. If you could please turn to Page 118. Do you
24 recall that a number of amendments were offered to
25 Senate Bill 14, some of which were adopted; some of

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1 which were not?

2 A. Yes.

3 Q. Looking at Page 118, do you see Amendment 12
4 offered by Senator Davis?

5 A. Yes.

6 Q. This amendment would have prohibited the State
7 from charging fees for documents used as proof of
8 identification under Senate Bill 14, correct?

9 A. Do you have a copy of the actual amendment
10 itself?

11 Q. I am looking at the underlying text.

12 A. That is a short version of it. That's not the
13 amendment itself. If you're going to ask me about the
14 amendment, you're going to have to show me the amendment
15 in full.

16 Q. Do you recall generally that this amendment
17 would have prohibited the State from charging fees for
18 documents to use as proof of identification under Senate
19 Bill 14?

20 A. If you could show me the exact amendment that
21 was filed, I might -- you might can refresh my memory.

22 Q. Does the Senate Journal not accurately reflect
23 the substance of the amendment?

24 A. The substance of the amendment, the caption of
25 the amendment does not capture the body of the

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1 amendment, and 75 percent of the amendment could have
2 been fine, but the other 25 percent might not have been.
3 So you have to look at the amendment in its entirety to
4 see what the amendment did.

5 Q. Does the Senate Journal not reflect the words
6 that would have been added to Senate Bill 14 via this
7 amendment?

8 A. The Senate Journal does the CliffsNotes of the
9 amendment.

10 Q. Is it fair to say that Senator Davis offered an
11 amendment that would have prohibited fees charged by the
12 State for documents used as proof of identification
13 under Senate Bill 14?

14 A. And I can't verify that unless you can produce
15 the actual amendment so I can look at it?

16 Q. This is public record, correct, the Senate
17 Journal?

18 A. Yes.

19 Q. Does this not reflect the events that happened
20 on the Senate Floor?

21 A. The events, the Cliffs Notes of the content,
22 but it does not have the full everything.

23 Q. What do you think is missing from Amendment 12
24 here?

25 A. You would have to tell me that, but if you can

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1 produce the amendment.

2 Q. Is this language -- do you believe that
3 language is missing, language that would have been added
4 via Amendment 12?

5 A. It would be subjective for me to try to project
6 that.

7 Q. I'm just trying to understand what you mean by
8 a Cliffs Note version. What I see here is underlying
9 language that would have been added to Senate Bill 14
10 via this amendment.

11 Do you believe that there is language
12 beyond this language that would have been added via this
13 amendment?

14 A. Yes.

15 Q. Would you bear with me and be willing to talk
16 about the language we see here in the Senate Journal,
17 which as you noted, is public record?

18 A. Sure.

19 Q. Okay. So based on the Senate Journal that is
20 public record, does it appear that this amendment
21 offered by Senator Davis would have prohibited the State
22 from charging fees for documents used as proof of ID
23 under Senate Bill 14?

24 A. I can't tell, because we don't have the
25 amendment.

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1 Q. You moved to table this amendment, correct?

2 A. On a motion by Senator Fraser, the motion was
3 tabled.

4 Q. And would adopting an amendment that would have
5 prohibited the State from charging fees for documents
6 used as proof of ID under Senate Bill 14 have interfered
7 with the purposes of Senate Bill 14?

8 A. Once again, unless you have the amendment to
9 look at it, it is likely that there was a cost to doing
10 this, which if you're going to use a driver's license
11 for identification, and if there's a charge for a
12 driver's license in the State of Texas, and if you're
13 going to say you're going to use that for
14 identification, that would mean you would have to give
15 everyone a free driver's license.

16 Q. Let's look at Paragraph 2 in this particular
17 amendment. Is it fair to say that this amendment, as
18 written here in the Senate Journal, would also have
19 prohibited the State from charging fees to obtain
20 underlying documentation required to obtain an EIC?

21 A. Once again, furnish the amendment to me and I
22 can answer that question.

23 Q. Separate and apart from this document, would an
24 amendment prohibiting the State from charging fees to
25 obtain the underlying documentation required to obtain

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1 an EIC have interfered with the purposes of Senate Bill
2 14?

3 A. You're being subjective in assuming a what-if.
4 If you're going to have an exact example of something
5 that happened, I'll be glad to comment on it.

6 MR. WEST: Objection, nonresponsive.

7 Q. (By Ms. Faransso) I am asking you if an
8 amendment had been adopted, which, Senator, if you bear
9 with me, I believe it's a fair question, if an amendment
10 had been adopted that prohibited the State from charging
11 fees to obtain underlying documentation to obtain an
12 EIC, if that amendment would have interfered with the
13 purposes of Senate Bill 14?

14 A. Again, you're going to have to look at the
15 amendment, because if the amendment had required that a
16 driver's license be given free of charge, that would
17 have created an undue burden on the State, because
18 currently we have a revenue stream from driver's
19 license.

20 Q. The purpose of Senate Bill 14 was to deter
21 in-person voter fraud, correct?

22 A. Yes.

23 Q. I appreciate that an amendment might have a
24 fiscal impact on the budget. I am simply asking whether
25 this particular amendment that we've been looking at

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1 would have interfered with the purpose of Senate Bill 14
2 to deter in-person voter fraud?

3 MS. HALPERN: But you don't want him to
4 focus on the fiscal impact of any other particular
5 aspect?

6 MS. FARANSO: I'm simply asking about --

7 MS. WESTFALL: Objection to the sidebar.

8 MS. HALPERN: Objection, relevance.

9 A. The net result of the bill was that in the
10 final version, we did offer a free ID and virtually free
11 birth certificate.

12 Q. (By Ms. Faranso) Senate Bill 14 provided for a
13 free birth certificate?

14 A. No. I said by the time of implementation, by
15 the time of the first election, that was the results.
16 And by the instruction to DPS and the Department of
17 Health Services to move in that direction, that we were
18 able to do that.

19 MS. WESTFALL: Objection, relevance.

20 Q. (By Ms. Faranso) Senate Bill 14 did not
21 include a provision requiring a free birth certificate,
22 did it?

23 A. No.

24 Q. Okay. If you could move on to Page 121. Do
25 you see Amendment 16 offered by Senator Vanderpute?

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1 MS. HALPERN: Vanderpute.

2 MS. FARANSSO: Vanderpute, thank you.

3 A. Okay.

4 Q. (By Ms. Faransso) Take a moment to review that,
5 please.

6 This amendment would have expanded the
7 list of acceptable forms of identification in Senate
8 Bill 14, correct?

9 A. Yes.

10 Q. And you moved to table this amendment, correct?

11 A. Yes.

12 Q. Would allowing the forms of ID listed here in
13 Senator Vanderpute's amendment have interfered with the
14 effectiveness of Senate Bill 14?

15 MS. HALPERN: Objection, asked and
16 answered.

17 MS. FARANSSO: I'm asking this question
18 with respect to a new amendment.

19 MS. HALPERN: But you spent all morning
20 testifying about why those things weren't in his bill.

21 MS. FARANSSO: We did not discuss this
22 amendment.

23 MS. HALPERN: Not this amendment, no.

24 A. This amendment is exactly what we discussed all
25 morning. This is putting back -- I'm sorry, I would

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1 have to have both the Election Code Book to accurately
2 answer you, and also look at 362. But I believe this
3 amendment puts back in all the forms of the
4 identification that was in 218 and 362. I believe that
5 is the case.

6 Q. (By Ms. Faransso) HB 218, SB 362 and SB 14 all
7 served the same purpose, correct?

8 A. The purpose was to protect the integrity of the
9 voting box.

10 Q. And these were forms of ID that were included
11 in the previous versions of the Voter ID legislation,
12 correct?

13 A. They were unacceptable to me?

14 Q. At the time were they acceptable?

15 A. Yes.

16 Q. And you sponsored a bill that you found
17 unacceptable?

18 A. I said that they were a starting point, a good
19 starting point, and that in the process that I wanted to
20 correct that. My goal was to change the forms of
21 identification, yes.

22 Q. Do you typically sponsor bills that you find to
23 be unacceptable?

24 A. Yes.

25 Q. Do you typically carry bills from the House

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1 that you find to be unacceptable?

2 A. I would carry a bill, and during the process
3 try to improve the bill.

4 Q. If you could turn to Page 123, please. And do
5 you see Amendment Number 18 offered by Senator Hinojosa?

6 A. Okay.

7 Q. This amendment concerned concealed handgun
8 licenses, correct?

9 A. Yes.

10 Q. And this amendment was ultimately adopted,
11 correct?

12 A. Yes.

13 Q. Do you know why this amendment was adopted?

14 A. I think I've already answered that question.

15 Q. Can you indulge me and let me know again why
16 this particular amendment was adopted?

17 MS. HALPERN: Objection, legislative
18 privilege.

19 A. Senator Hinojosa is a respected Hispanic
20 member, a friend of mine, and he laid out the basis that
21 he would like to have this included. One of the reasons
22 that this is an acceptable form of identification is
23 because it is issued by the Texas Department of
24 Transportation, DPS. The indications on the bill, and I
25 actually need to go back to the far earlier testimony I

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1 gave where I didn't clarify, but that identification is
2 almost identical to the Texas driver's license. It's
3 issued by the same agency, so the same controls for
4 duplication are in it. And I've also in the break have
5 realized that Texas is recognized as one of the safest
6 or the toughest to change or replication. So the ID
7 from the Department of Public Safety on concealed
8 handguns seemed like a logical place, and I accepted the
9 amendment in the mode of compromise to a Hispanic member
10 of the Texas Senate, Democrat Hispanic.

11 Q. Do you believe that this amendment was
12 duplicative insofar as many applicants who apply for a
13 concealed handgun's license use a Texas driver's license
14 to obtain that form of identification?

15 MS. HALPERN: Objection, assumes facts not
16 in evidence.

17 A. Not in evidence, and I have no way of knowing
18 that.

19 Q. (By Ms. Faransso) On the same page --

20 MS. WESTFALL: Objection to your
21 argumentative objection and the tone, Ms. Halpern.

22 MS. HALPERN: Counsel, I know what's
23 required to get a concealed handgun license, and you
24 don't show a driver's license to get one. I'm sorry.
25 It assumes facts not in evidence. You get fingerprinted

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1 in Texas.

2 MS. WESTFALL: I've looked at the
3 requirements myself, too. I'm not sure that's accurate,
4 but...

5 MS. HALPERN: I have one. I know it's
6 accurate.

7 MS. WESTFALL: Well, let's continue.

8 MS. HALPERN: You get fingerprinted.

9 Q. (By Ms. Faransso) If we could continue to look
10 at the same page, Amendment 19, offered by Senator
11 Ellis, do you see that amendment?

12 A. Amendment 19?

13 Q. Yes. Right below 18.

14 A. I don't see Ellis's name.

15 Q. It's right above Floor Amendment Number 19,
16 Senator Ellis offered the following amendment.

17 A. Got it. Got it. Okay, yes. Okay.

18 Q. Okay? And this amendment would have allowed as
19 an acceptable form of identification a student ID card
20 from a public university in Texas that contained the
21 person's photograph and has not expired, correct?

22 A. Yes.

23 Q. Just to be clear, this amendment would not have
24 permitted student IDs from other states, would it?

25 A. No.

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1 Q. And this amendment would not have permitted
2 students IDs from private institutions of public -- of
3 higher education in Texas, would it?

4 A. No.

5 Q. So this amendment would have allowed a limited
6 set of student ID cards from public universities in
7 Texas, correct?

8 A. Yes.

9 Q. And you moved to table this amendment; is that
10 right?

11 A. Yes.

12 Q. Did you personally oppose this amendment?

13 A. Yes.

14 Q. Why is that?

15 A. Are you aware of the number of public
16 universities in Texas and the difficulty for a poll
17 worker to identify which is a real public university and
18 which is not? Austin College sounds like a public
19 university, but it is, in fact, not. And the difficulty
20 of a poll worker having the burden of deciding that, of
21 them not knowing, we made the determination that that
22 was much too difficult of a burden to put on a poll
23 worker and we chose not to use that.

24 Q. And would allowing the use of student
25 identification from a public university in Texas have

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1 interfered with the effectiveness of Senate Bill 14?

2 A. Yes, because it puts the difficulty of a burden
3 on a poll worker of interpreting, is that a fair -- a
4 real type of identification, or is it one that had been
5 duplicated at Kinko's?

6 Q. If you turn to Page 137, do you see Amendment
7 40 offered by Senator Duncan?

8 A. Okay.

9 Q. Do you want to take a moment to review that
10 amendment?

11 A. Sure.

12 Q. Ready?

13 A. Uh-huh.

14 Q. So Amendment 40, in part, would have required
15 the counting of provisional ballots, voters who attest
16 that they're indigent and do not have ID; is that
17 correct?

18 A. That is correct.

19 Q. Did you see that this amendment was adopted by
20 the Senate?

21 A. Yes.

22 Q. But it was not ultimately included in the final
23 version of Senate Bill 14, correct?

24 A. Yes.

25 Q. Yes, it was not included?

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1 A. It was not included.

2 Q. Do you know why it wasn't included?

3 A. It was an amendment that on its face appeared
4 to be acceptable. We accepted the amendment, and I
5 think it was accepted by voice vote, unanimous voice
6 vote. But once the bill matured as it went through the
7 House and into Conference Committee, that the bill we
8 found was not -- was not practical to implement.

9 Q. And why was it not practical?

10 A. Because there's too many opportunities for
11 abuse.

12 Q. Too many opportunities for abuse. In what ways
13 would there be abuse of this particular provision?

14 A. Because you're enabling a broad group of people
15 to vote without identification, and I think it was
16 determined that this opened up an area that we were
17 not -- you know, would not be secure for the voter box,
18 the integrity of the voting box.

19 Q. When you say it's opening up an area for a
20 broad group of people to vote, are you referring to --
21 the broad group, does that refer to indigent voters in
22 Texas?

23 A. A group of people that would not be showing
24 proof of identification of who they are -- who they -- a
25 photo ID.

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1 Q. And that group of people would have proven that
2 they were indigent under this particular provision,
3 correct?

4 A. And I think that was part of the difficulty of
5 clarifying that someone was indigent.

6 Q. Do you know if there are other items of
7 legislation in Texas that require proof of indigency?

8 A. I don't know.

9 Q. Had this amendment been adopted in the final
10 version of Senate Bill 14 that was signed into law,
11 would it have reduced the burden on poor voters in
12 Texas?

13 A. I don't know.

14 Q. Can you imagine that it would have allowed a
15 segment of the population who could otherwise not afford
16 to obtain ID to vote in Texas under Senate Bill 14?

17 A. That would be subjective.

18 Q. You can put that away. Just a few more
19 questions.

20 Senator, are you familiar with the
21 decision of the DC District Court in Texas v. Holder
22 denying judicial preclearance under Senate Bill 14 -- of
23 Senate Bill 14?

24 A. No.

25 Q. You don't recall that decision or the basis for

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1 that decision?

2 A. If you'd like to give me a document showing me
3 that, it will probably refresh my memory.

4 Q. You have enough documents, so I will spare you
5 that.

6 Are you familiar with the Supreme Court's
7 decision in Shelby County, which had the effect of
8 terminating the enforcement of Section 5 of the Voting
9 Rights Act?

10 A. Yes.

11 Q. Do you recall when that decision came out?

12 A. No.

13 Q. I'll represent to you that it was June 2013.
14 Are you aware that immediately after that decision was
15 handed down, the Texas Attorney General announced that
16 he would immediately begin enforcing Senate Bill 14?

17 A. Yes.

18 MR. SCOTT: Objection, misrepresentation.

19 Q. (By Ms. Faransso) Was your testimony yes? You
20 can answer the question.

21 A. I'm aware that we moved forward to implement
22 the Voter ID bill.

23 Q. Did you or anyone in your office speak with the
24 Office of the Attorney General about the decision to
25 enforce Senate Bill 14?

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1 MS. HALPERN: Yes or no answer.

2 A. I'm not -- I don't know.

3 MS. FARANSSO: I'll pass the witness.

4 MS. WESTFALL: Would you like to take a
5 break --

6 MS. HALPERN: Yes.

7 MS. WESTFALL: -- before we switch seats.

8 (Recess from 2:41 p.m. to 2:49 p.m.)

9 MS. WESTFALL: Let's go back on the
10 record. We're back on the record.

11 EXAMINATION

12 BY MS. WESTFALL:

13 Q. Senator Fraser, my name is Elizabeth Westfall.
14 I represent the plaintiff United States. I just have a
15 few questions for you.

16 Do you know what the requirements are to
17 be eligible to vote in Texas?

18 A. I actually looked at that recently. I think
19 anyone that is 18 years old, a resident of Texas, and I
20 do believe you need to be a citizen, and you are
21 eligible, I believe, to vote.

22 Q. And is it also true that you need to be -- you
23 can't be a convicted felon unless you have completed
24 your sentence --

25 A. I believe that's correct.

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1 Q. -- probation and parole?

2 A. I believe that is correct.

3 Q. And I just want to caution you. I know we've
4 been in this before, but we need not to talk over each
5 other so that the transcription can be proper, okay?

6 A. We have a history of that.

7 Q. We do have a history of that.

8 Is it also true that to be eligible to
9 register to vote, you have to have not been declared by
10 a court to be mentally incapacitated?

11 A. I do believe that is correct, yes.

12 Q. And to register to vote must an applicant
13 complete a voter registration application?

14 A. Yes.

15 (Exhibit 21 marked for identification.)

16 Q. (By Ms. Westfall) You've been handed what's
17 been marked as Exhibit 21. Do you recognize this
18 document?

19 A. No.

20 Q. Could you turn to the second page of this
21 document?

22 A. Uh-huh.

23 Q. Do you see what it says at the top?

24 A. Texas voter registration application.

25 Q. Do you recognize this to be a Texas voter

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1 registration application?

2 A. I do not.

3 Q. Do you see that the application indicates that
4 a person completing an application to register to vote
5 in Texas must check a box under Section 1 indicating
6 that the applicant is a U.S. citizen?

7 A. Yes.

8 Q. Do you see at the bottom under Section 9, that
9 the person must sign at the X?

10 A. Yes.

11 Q. And do you see that the applicant must sign
12 under penalty of perjury that the applicant is a U.S.
13 citizen?

14 A. Yes.

15 Q. And putting aside Exhibit 21, do you know that
16 if once a county registrar approves a voter registration
17 application, that the registrar will mail the applicant
18 a voter registration card?

19 A. Yes.

20 Q. Is it fair to say that after the voter submits
21 a voter registration application, the voter doesn't need
22 to take any other steps to get that card?

23 A. Yes.

24 Q. Before Texas started to enforce Senate Bill 14,
25 what were voters required to show at the polls to prove

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1 their identity?

2 A. A voter registration card or a driver's
3 license. Or a passport also was accepted.

4 Q. Do you know whether if a voter lost their
5 registration card they could present from one of a
6 number, a large number of forms of ID?

7 A. Yes.

8 Q. With regard to absentee voting in Texas, do you
9 know whether it is a no excuse absentee voting state?

10 A. It is an excuse.

11 Q. What do you mean by that?

12 A. That you -- there's parameters that you have to
13 meet in order to vote by absentee.

14 Q. So only certain categories of voters in certain
15 situations can vote absentee; is that correct?

16 A. By rule and by law, yes.

17 Q. Before Texas started enforcing Senate Bill 14,
18 if a voter appeared without a voter registration card or
19 any form of acceptable ID, could the voter still vote?

20 A. I believe they could vote a provisional ballot.

21 Q. Are provisional ballots always counted? Under
22 prior -- prior to Senate Bill 14, were they always
23 counted?

24 A. Not to my knowledge.

25 Q. Do you know under what circumstances if a

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1 voter, prior to Senate Bill 14, came in to vote didn't
2 have an appropriate ID and voted a provisional ballot,
3 that that ballot would be counted?

4 A. If they came back within an appropriate number
5 of days and gave correct identification, it would be
6 counted.

7 Q. Is your testimony with regard to the law as it
8 existed before Senate Bill 14 was in effect --

9 A. I believe --

10 Q. -- or after?

11 A. I believe it's the same. Because we have a
12 provisional ballot provision in Senate Bill 14.

13 Q. Okay. We may talk about that a little bit
14 later.

15 Under Senate Bill 14, if a voter appears
16 without required photo ID, can the voter cast a ballot?

17 A. Yes.

18 Q. What type of ballot can the voter cast?

19 A. Provisional.

20 Q. Under what circumstance will that provisional
21 ballot be counted?

22 A. If they return within, I believe it is five
23 days, with sufficient photo ID, they will be counted.

24 Q. Are there any exceptions to that requirement?

25 A. Not to my knowledge.

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1 Q. Do you recall that one exception was, under
2 Senate Bill 14, that if the voter fills out an affidavit
3 indicating a religious objection to being photographed?

4 A. I -- I'm sorry. I'm not -- I don't know.

5 Q. What criteria for determining which photo IDs
6 -- what were the criteria for determining which photo
7 IDs to include in Senate Bill 14?

8 A. I think we've done an asked and answered on
9 that, and I'll be glad to go through it again, if you'd
10 like.

11 Q. What is your answer?

12 A. My answer is I'll be glad to go through it
13 again, but I've already answered that question once.

14 MS. WESTFALL: Could you read back the
15 question, please?

16 (The requested portion was read back by
17 the court reporter.)

18 A. You'd like me to answer it?

19 Q. (By Ms. Westfall) Yes.

20 A. The criteria we used was coming up with both
21 federal and state government identification that was
22 issued by both entities that was secure. The ones we
23 came up with from the federal government was the
24 passport and/or military ID that were not expired, and
25 then they had a -- the certificate of -- what's it

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1 called? The immigration certificate where -- I'm sorry.
2 I've lost the word. Do you mind if I reference the --

3 Q. Certainly.

4 MS. WESTFALL: For the record, the witness
5 is looking at Exhibit Number 16.

6 A. Okay. What is the page number? A United
7 States citizenship certificate with a photograph on it.
8 From a state basis, we are allowing a Texas driver's
9 license, a concealed handgun license that was issued by
10 DPS, or an identification card that was issued by DPS.

11 Q. (By Ms. Westfall) Did you consider whether a
12 form of photo ID to be included in the bill would prove
13 that a voter was eligible to vote in Texas?

14 A. At the time the bill was passed and shortly
15 after, the answer was yes.

16 Q. What did you consider in that regard?

17 A. That one of the determination that on the Texas
18 driver's license it clarified if someone was a citizen
19 by if they were using a Texas driver's license. There
20 was a law that -- there was a bill that was passed since
21 then that has since changed that so that a -- a
22 nonresident can receive a Texas driver's license, and if
23 they were willing to sign this and fraudulently say they
24 are a citizen and they go to the ballot box and they
25 present the driver's license, that they would likely be

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1 able to vote.

2 MS. HALPERN: Let the record reflect that
3 the exhibit he used to find this he was referring to was
4 Exhibit 21, the --

5 THE WITNESS: Voter registration.

6 MS. HALPERN: -- voter registration.

7 Q. (By Ms. Westfall) So this was legislation that
8 was enacted after Senate Bill 14?

9 A. Texas law provides that the last bill to be
10 signed into law is the law of the land, and it trumped
11 the treatment that we had on the driver's license. The
12 old driver's license provided that you -- it was a
13 temporary license by a noncitizen.

14 Q. So if a voter presented one of the forms of
15 photo ID under Senate Bill 14 at the time it was
16 enacted, would that indicate that the voter was eligible
17 to vote in Texas necessarily?

18 A. They would still have to be on the voter
19 roll. You have to be on the voter roll per registering
20 to vote, you have to go to the right location for that
21 voting, and you have to have a photo ID proving you are
22 who you say you are.

23 Q. Turning back to my question, if you presented
24 the photo ID listed under Senate Bill 14, would that
25 prove that you're eligible to be voting?

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1 A. No.

2 Q. That would just prove that you were who you
3 were when you came into the poll, is that correct?

4 A. It proves you are who you are on that card.

5 Q. Okay.

6 A. It doesn't prove that you are eligible to vote.

7 Q. Are permanent residents eligible to serve in
8 the U.S. military, to your knowledge?

9 A. Ask that question again, please.

10 Q. Are permanent residents of the United States
11 allowed to serve in the U.S. military?

12 A. Yes.

13 Q. So they can obtain a military ID; is that
14 right?

15 A. They are given a military ID as a result of
16 serving.

17 Q. Can permanent residents obtain a Texas driver's
18 license?

19 A. Yes. If they claim that is their residence.

20 Q. Can permanent residents be issued a personal ID
21 card in Texas?

22 A. Yes.

23 Q. Can permanent residents obtain a concealed
24 handgun license?

25 A. Yes.

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1 Q. Can persons who are mentally incapacitated
2 obtain a passport?

3 A. I would believe you could.

4 Q. Can persons who are mentally incapacitated
5 obtain a personal state card in the State of Texas?

6 A. I would think so, yes.

7 Q. Can a Texan who is on probation for a felony
8 conviction lawfully possess a driver's license in Texas?

9 A. I don't know the answer to that.

10 Q. Is it fair to say that presenting a form of
11 photo ID allowed by Senate Bill 14 does not necessarily
12 prove that the cardholder is eligible to vote in Texas?

13 A. Based on the questions you just asked, it is
14 obvious that there are people that will have a photo ID
15 that are not eligible to vote.

16 Q. Turning back to your testimony about House Bill
17 218, after House Bill 218 was referred to the Senate,
18 was there a time that you moved to suspend the regular
19 order of business?

20 A. Repeat the question again.

21 Q. Certainly. After House Bill 218 was referred
22 to the Senate, was there a time when you moved to
23 suspend the regular order of business?

24 A. Yes.

25 Q. Did that occur on May 15, 2007?

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1 A. I don't know the date.

2 MS. WESTFALL: Would you please mark this.

3 (Exhibit 22 marked for identification.)

4 Q. (By Ms. Westfall) You've been handed what's
5 been marked Exhibit 22. Do you recognize this document?

6 A. No.

7 Q. Is it the Senate Journal from May 15, 2007?

8 A. It appears to be.

9 Q. Turning your attention to -- and the
10 pagination, as you know, is at the top of the page,
11 turning your attention to Page 2063.

12 A. Okay.

13 Q. Do you see at the bottom half of the page that
14 you moved to suspend the regular order of business to
15 take up Committee Substitute House Bill 218?

16 A. Yes.

17 Q. Is it correct, therefore, that you did, in
18 fact, on May 15, 2007, move to suspend the regular order
19 of business to allow the Senate to consider House Bill
20 218?

21 A. Yes.

22 Q. Why did you ask to be recognized for a motion
23 on House Bill 218 that day?

24 A. I didn't ask to be recognized.

25 Q. Why did you move to suspend the regular order

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1 of business on that day?

2 A. Sorry. Let me retract my answer. I was
3 advised, which is a normal event, is that someone from
4 the front desk, the Lieutenant Governor's desk, came
5 back and said you're going to be recognized for a motion
6 on 218 in five minutes.

7 Q. Was that the first time that you heard that you
8 were going to be recognized for that motion?

9 A. Yes.

10 Q. Had you asked Lieutenant Governor Dewhurst's
11 Office in advance of this request if you could make the
12 motion?

13 A. No.

14 Q. Did the Lieutenant Governor's Office ask you in
15 advance of that notification you just testified to, to
16 make a motion to suspend the rules?

17 A. Prior to?

18 Q. Yes.

19 A. No.

20 Q. Would it surprise you to learn that Senator
21 Williams testified in a deposition that you were likely
22 involved in the decision to be recognized to make the
23 motion on House Bill 218?

24 A. Yes, I'd be surprised.

25 Q. Do you think Senator Williams' recollection is

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1 incorrect in that regard?

2 A. I know that -- the answer is yes.

3 Q. The support of two thirds Senators was required
4 to suspend the rules and bring House Bill 218 to the
5 floor for a vote, was it not?

6 A. Yes.

7 Q. And the motion to suspend the regular order of
8 business with the first vote to take up House Bill 218
9 prevailed 19 to 9; is that correct?

10 A. That is correct.

11 Q. Was the request made to verify that vote?

12 A. Yes.

13 Q. By whom?

14 A. Senator Shapleigh.

15 Q. To whom was that request made?

16 A. You have to make a request on the floor to the
17 presiding officer.

18 Q. Would that have been the Lieutenant Governor?

19 A. I don't know who was in the chair at the time.

20 Q. Turning your attention to Exhibit 22, is there
21 any way to ascertain from Exhibit 22 who was presiding?

22 A. No.

23 Q. Whoever was presiding permitted the
24 verification of the vote to occur, correct?

25 A. Yes.

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1 Q. Did you at any time ever talk to that person?

2 A. Who, Senator Shapleigh?

3 Q. To the person whoever was presiding to allow
4 that vote to occur?

5 A. No.

6 Q. Are you certain that it was not the Lieutenant
7 Governor?

8 A. I didn't say that. My answer is I don't know
9 who was in the chair.

10 Q. Did you hear from anyone at any time as to why
11 the verification of the vote was permitted?

12 MS. HALPERN: You can answer yes or no.

13 A. No.

14 Q. (By Ms. Westfall) What was your reaction to the
15 decision to permit a verification of the vote?

16 A. There is no reaction, there's a motion and they
17 acted on it.

18 Q. Were you disappointed?

19 A. I had no reaction either way.

20 Q. What was the outcome of the verification of the
21 vote?

22 A. The motion to suspend was -- did not suspend.

23 Q. Did it not suspend because Senators Uresti and
24 Whitmire voted against that motion?

25 A. Because Senator and Uresti were not present,

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1 even though they had -- if you will look at the front
2 page, they had checked in and shown to be present when
3 the vote was taken. But when the vote -- actually the
4 first vote, they did not vote.

5 Q. Did the Senate take any further action on House
6 Bill 218?

7 A. 218, no. 218, during that session, there was
8 no other action.

9 Q. Why not?

10 MS. HALPERN: Objection, legislative
11 privilege. You can answer if you know.

12 A. I was never recognized again for a motion to
13 suspend.

14 Q. (By Ms. Westfall) Were there any conversations
15 about why House Bill 218 did not pass the Senate
16 afterwards?

17 MS. HALPERN: You can answer yes or no.

18 A. No.

19 Q. (By Ms. Westfall) Did you testify in your
20 previous deposition that you had one conversation with
21 Ms. Rathgeber?

22 A. I believe I was asked if I had a conversation,
23 and I said I wasn't sure. The question was asked, if
24 you had one, who would it have been? And I said it
25 probably would have been Ms. Rathgeber. You asked just

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1 then do I remember a conversation, the answer is no.

2 Seven years ago, I do not remember a conversation.

3 Q. Did you have, after the vote on House Bill 218,
4 any conversation with anybody about strategy for
5 ensuring passage of Voter ID in 2009?

6 A. No.

7 Q. At any time between 2005 and 2011, were you
8 concerned about the State of Texas's voter roles?

9 A. Ask that question again.

10 Q. At any time between 2005 and 2011, were you
11 concerned about the state, the quality of Texas's voter
12 rolls?

13 A. Yes.

14 Q. Could you describe those concerns?

15 A. Testimony had shown that we were having
16 numerous discrepancies of people voting that were
17 deceased, people that were on the voter roll that
18 shouldn't have been on it, people that are not eligible
19 to vote voting, people that were showing up at the
20 polls. And we didn't have the tools available to stop
21 ineligible people from voting, so yes, I had concerns.

22 Q. Did you introduce any legislation to require
23 the removal of ineligible voters from the voter roll
24 during that time period 2005 to 2011?

25 A. To my knowledge, no.

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1 Q. Between 2005 and 2011, did the legislature
2 enact any legislation to require improvements to the
3 maintenance of the State's voter rolls?

4 A. I'm sorry, I don't know.

5 Q. Did they enact anything to ensure that
6 ineligible voters are more promptly removed from the
7 poll -- from the rolls?

8 A. I don't know.

9 Q. Any time since you served in the Senate have
10 you been concerned about voter fraud related to absentee
11 ballots?

12 A. Yes.

13 Q. What is the nature of your concern?

14 A. We're reasonably sure that there is fraud in
15 absentee voting. It has been evidenced by the fact that
16 multiple times we've uncovered ineligible people were
17 signed up. There was a major fraud of the Acorn
18 Operation that was uncovered. There was evidence that
19 showed that there was in one case all the Dallas Cowboys
20 had been signed up to vote and the voter cards sent to
21 one residence, so it was implied that there was an
22 attempt to illegally vote people.

23 Q. Are you talking about voter registration
24 irregularities or absentee ballot irregularities?

25 A. Both.

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1 Q. Do you believe there's more voter fraud related
2 to absentee ballots than to in-person voter
3 impersonation?

4 A. I have know way of knowing.

5 Q. Did you introduce any legislation to address
6 voter fraud relating to voting by mail, absentee voting?

7 A. To my knowledge, no.

8 (Exhibit 23 marked for identification)?

9 Q. (By Ms. Westfall) Senator, you've been handed
10 what's been marked Exhibit 23. Do you recognize this
11 document?

12 A. Uh-huh.

13 Q. What is it?

14 A. It appears to be a release from December 15,
15 2008, from Janice McCoy from my office.

16 Q. Did you review this press release before it was
17 issued?

18 A. I'm sure I did.

19 Q. Do you see that in the second paragraph, it
20 states that the intent of Senate Bill 362 was to ensure
21 that the person who shows up at the polls is who he or
22 she claims to be?

23 A. Would you point out where you're seeing that?

24 Q. Certainly. It's at the second paragraph, a
25 couple of sentences in where you're quoted beginning

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1 with photo ID.

2 A. Yes.

3 Q. And it indicates that this bill is intended to
4 ensure that the person who shows up at the polls is who
5 he or she claims to be?

6 A. Yes.

7 Q. Was that your -- did you believe that was the
8 intent of Senate Bill 362 at the time of this press
9 release?

10 A. Yes.

11 Q. Do you see this press release also refers to
12 Senate Bill 363?

13 A. Yes.

14 Q. Could you describe that legislation?

15 A. In the Legislature, it is not uncommon to file
16 a companion bill to a bill that is a -- what we refer to
17 as a shell bill, that if for some reason something
18 happens to the original bill, you have a fallback
19 position of a secondary bill that could be used if
20 needed if for some reason the first bill doesn't make it
21 through the process. Senate Bill 363 was a shell bill,
22 and it was never even given a hearing because it was not
23 needed.

24 Q. It was a shell bill as a shell for Senate Bill
25 362; is that your testimony?

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1 A. Yes.

2 Q. And you were filing 363 in case Senate Bill 362
3 failed; is that your testimony?

4 A. There are places throughout the Legislature
5 that a bill can get hung up and mysteriously die, and
6 that we were putting in a fallback position. It is a
7 shell bill that's very common in the Legislature.
8 Virtually every important bill that I file, we would
9 file a shell bill in companion with it.

10 Q. Did Senate Bill 363 differ substantively from
11 Senate Bill 362?

12 A. 363 was a shell bill that had no substance. It
13 was only there as a placeholder and was never given a
14 hearing. So it was just a bill with a caption in order
15 to hold a place in line.

16 Q. But it had legislative language, it had a
17 change to the Election Code, it had substance, did it
18 not?

19 A. But it was not intended to be implemented with
20 that language, that it was a shell and that it was
21 intended to -- to implement new language into it if it
22 was needed.

23 Q. If that is the case, why did you talk about it
24 in this press release substantively?

25 A. Because we filed it.

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1 Q. Could you explain what Senate Bill 363 was --
2 said it did?

3 A. Described in the bill what was currently in the
4 bill.

5 Q. In other words, Senate Bill 363 required a
6 voter applicant to prove that he or she was a U.S.
7 citizen by furnishing a birth certificate, correct?

8 A. Yes.

9 Q. Is it fair to say that's a different part of
10 the voting process than what was required under Senate
11 Bill 362?

12 A. Yes?

13 Q. Did you regard these two bills as complimentary
14 in any way?

15 A. The 363 was never even asked for a hearing. It
16 was a shell bill.

17 Q. But they are different subject matter wise, are
18 they not?

19 A. Subject matter-wise, but the -- the caption of
20 the bill could have been used for either one.

21 Q. Senate Bill 363 pertained to voter registration
22 requirements, correct?

23 A. Unless you furnish me a copy of 363, I couldn't
24 tell you.

25 MS. WESTFALL: Let's go off the record for

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1 one second.

2 (Brief pause off the record.)

3 MS. WESTFALL: Let's go back on the
4 record.

5 Could you mark this?

6 (Exhibit 24 marked for identification.)

7 Q. (By Ms. Westfall) You've been handed what's
8 been marked as Exhibit 24. Do you recognize this
9 document?

10 A. No.

11 Q. Can you see at the top that this says, by
12 Fraser Senate Bill 363?

13 A. I do.

14 Q. And that it indicates it relates to procedures
15 for registering to vote and accepting a voter at the
16 polling place?

17 A. Yes.

18 Q. Could you describe what this legislation would
19 do?

20 A. Again, this is a shell bill, that the idea was
21 to file a bill as a placeholder in case a second bill
22 was needed. So --

23 Q. But -- go ahead.

24 A. The language of the bill was put there as a
25 shell and not intended to move forward evidenced by the

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1 fact that I didn't ask for a hearing on the bill.

2 Q. Notwithstanding the -- your testimony that
3 it's a shell bill, you did not seek a hearing, et
4 cetera, you issued a press release about the filing of
5 Senate Bill 363, did you not?

6 A. My chief of staff issued a press release.

7 Q. I believe you just testified that you approved
8 the issuance of this press release, did you not?

9 A. I think you said did I read the press release.
10 I don't remember saying I approved it.

11 Q. Senate Bill 362 pertained to identification
12 requirements at the polls when voting, correct?

13 A. Yes.

14 Q. Did anyone request that you file Senate Bill
15 363?

16 A. I did not remember, but I do not think so.

17 Q. Do you see that the release says, "Instead, I
18 want to ensure that" -- and this is one, two, three
19 four -- four paragraphs down -- "I want to ensure that
20 illegal aliens, noncitizens, and people otherwise not
21 qualified, do not dilute the legitimate votes cast by
22 citizens"?

23 A. To be eligible to vote in Texas, you have to be
24 an authorized or legal person to vote. A subset of
25 those people that are not legal to vote are people that

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1 are noncitizens. So if someone is not legal to vote by
2 that subset, no, they should not be voting.

3 Q. Just to go back to my question, Senator, you do
4 in the press release indicate that the purpose of Senate
5 Bill 363 is to ensure that illegal aliens, noncitizens,
6 and people otherwise not qualified, do not dilute
7 legitimate votes cast by citizens; isn't that correct?

8 A. I don't believe there's a reference there to
9 363 in that statement.

10 Q. The statement -- do you agree that there is
11 that statement in the press release?

12 A. The statement is there, but it does not
13 reference Bill 363. It's also referencing 362. In 362
14 we're making sure that the requirement of the people
15 voting are eligible to vote, and a subset of that are
16 people that are not citizens, because they are not
17 qualified to vote legally in Texas.

18 Q. Are you testifying about Senate Bill 363 or
19 362?

20 A. I'm saying there is not a reference to whether
21 that statement referred to either one. 363 was never
22 asked for a hearing, so it was a shell bill and never
23 heard. 362 did have a hearing, was passed in the
24 Senate, went to the Texas House, and failed to be
25 adopted.

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1 Q. And I appreciate your testimony, but if you
2 could focus on my question, we'll get through the day
3 much faster.

4 Turning your attention back to Exhibit 23,
5 you express an interest in ensuring that illegal aliens
6 and noncitizens are not participating in elections,
7 isn't that right?

8 A. The press release says that they are a subset
9 of making sure that people in Texas that are qualified
10 to vote are the only ones voting, and of the ones that
11 in order to qualify for Texas, someone who is not a
12 citizen is a subset of that group and is not qualified
13 to vote.

14 Q. Did you have a concern about illegal aliens
15 voting in Texas at the time of this press release?

16 A. I had a concern before, during and after this
17 was done making sure that every person in Texas was a
18 qualified voter and subsets of that, that were not
19 qualified, should not be voting.

20 Q. Turning your attention back to my question, did
21 you have a concern about illegal aliens in Texas
22 participating in elections in Texas at that time?

23 A. Before, during and after the bill was filed, I
24 continued to have -- make sure that anyone on -- that
25 only eligible voters in Texas could vote and a subset of

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1 those illegal voters, were persons that were not
2 citizens, and if they were not citizens, they should not
3 be allowed to vote.

4 Q. So the answer to my question is yes?

5 A. The answer is I was concerned prior, before,
6 during and after and that anyone who is not qualified to
7 vote in Texas should not vote, and a subset of that is
8 people that are noncitizens.

9 Q. So I'm going to try again. Did you have a
10 concern, as part of the concerns you just testified to,
11 that illegal aliens were participating in elections in
12 Texas?

13 A. I had a concern that no one in Texas that was
14 not eligible to vote should be voting, and a subset of
15 that were people that were noncitizens.

16 Q. So is the answer to my question yes?

17 A. The answer is I continue to have a concern of
18 making sure that no one that was ineligible to vote in
19 Texas should be voting, and a subset of that was people
20 that were noncitizens.

21 Q. What was the basis of your concern with regard
22 to undocumented persons participating in Texas
23 elections?

24 A. I was concerned with making sure that the --
25 for the integrity of the ballot box, that only people

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1 that were eligible to vote should be voting, and no one
2 that's ineligible should vote, a subset of that were
3 people that were not citizens.

4 MS. WESTFALL: Okay. I'm going to move to
5 strike as nonresponsive.

6 Q. (By Ms. Westfall) I want you to listen
7 carefully to the question so we can get through and move
8 on to another topic and another exhibit, sir.

9 What was the factual basis for your
10 concern about undocumented persons participating in
11 Texas elections?

12 A. I -- my concern was making sure that I did not
13 feel that we had the tools in Texas to ensure the
14 integrity of the ballot box, and that if someone was not
15 qualified to vote, we did not have sufficient tools in
16 place to identify that person and prosecute them for
17 voting illegally. So anyone that was not qualified to
18 vote was a concern, a subset of that were people that
19 were noncitizens.

20 Q. And I believe you testified earlier that the
21 sole purpose of Senate Bill 362 was to prevent in-person
22 voter impersonation, right?

23 A. It was to -- I think what I said was to protect
24 the integrity of the ballot box.

25 Q. As it pertained to in-person voter

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1 impersonation, correct?

2 A. Senate Bill 362, you're referring to? Referred
3 to in-person, yes.

4 Q. Sitting here today, can you recall any facts,
5 convictions, information about noncitizens participating
6 in Texas elections?

7 A. I'm going to need that repeated.

8 MS. WESTFALL: Could you read it back?

9 (Requested portion was read back by the
10 court reporter.)

11 A. You've asked multiple questions about
12 convictions, and I don't think I've addressed
13 convictions in anything we've said. My answer continues
14 to be that Texas did not have the tools available under
15 current law to identify people that were not eligible to
16 vote, and of that people ineligible to vote were
17 obviously people that were not -- that didn't meet the
18 requirements.

19 Q. (By Ms. Westfall) Why did you believe that the
20 tools were insufficient?

21 A. Because, you know, after looking at the --
22 listening to the testimony, doing my research of what
23 had happened in other states, looking at the passage of
24 the Indiana and the Georgia law, looking at the
25 recommendations that had been placed by the Carter-Baker

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1 Commission, an accumulation of all that data convinced
2 me that Texas did not have sufficient tools to protect
3 the integrity of the ballot box.

4 Q. Did you have concerns about noncitizens from
5 particular countries or areas of the world who were
6 participating in Texas elections?

7 A. Again, my concern was making -- that we did not
8 have sufficient tools to protect the integrity of the
9 ballot box to ensure that people that were not qualified
10 to vote, you know, would not be voting, and obviously a
11 subset of that was people that were noncitizens from
12 multiple countries around the world that were not U.S.
13 citizens.

14 Q. I want to ask this question a different way.

15 THE WITNESS: Can I take a break?

16 MS. WESTFALL: Sure.

17 (Recess from 3:29 p.m. to 3:38 p.m.)

18 Q. (By Ms. Westfall) Senator, before the break we
19 were talking about Exhibit 23 and Senate Bill
20 363. Senate Bill 363 did not ensure that all types of
21 ineligible voters would be kept off the rolls; is that
22 correct?

23 A. I don't believe we addressed that. I think
24 I've made it clear that 363 was a shell bill and that
25 the only thing we were interested in was a caption as a

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1 fallback position for 362, there was no intent to pass
2 363. 363 was never asked for a hearing.

3 Q. I understand that it was -- that your testimony
4 is that it was a shell bill, that you did not ask for a
5 hearing, but it did have content to the bill, did it
6 not?

7 A. Like all shell bills that are filed in the
8 Legislature, you have to have some verbiage in the bill
9 in order to file a bill. But when a bill is a shell
10 bill and there's no intention to pass, that is generally
11 disregarded by everyone until a hearing is held and then
12 you look at the content.

13 Q. You nevertheless issued a press release
14 announcing that you had filed Senate Bill 362 in
15 describing the substance of the bill, did you not?

16 A. I'm sorry?

17 Q. You had a press release announcing that you had
18 filed Senate Bill 363?

19 A. There's a press release filed by Janice McCoy.

20 Q. Certainly, Janice McCoy was the contact for a
21 press release that came out of your office; isn't that
22 right?

23 A. It says she was the contact, yes.

24 Q. Senate Bill 363, turning your attention now to
25 Exhibit 24, did not try to prevent persons who did not

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1 reside in Texas from registering to vote; isn't that
2 right?

3 A. Ask your question again.

4 Q. Senate Bill 363 was not designed so prevent
5 non-Texans from registering to vote?

6 A. 363 was not designed to do anything. It was a
7 shell bill. There was no intent to pass 363. 363 was a
8 placeholder of a caption in case it was needed.

9 Q. Okay. Just so we can move on to another
10 exhibit. In summary, your testimony is that Senate Bill
11 363 was a shell bill. You did not ask for a hearing.
12 But nevertheless, your office issued a press release
13 describing the filing of Senate Bill 363, is that your
14 -- is that your testimony?

15 A. Someone from my office issued a press release.

16 Q. Okay. I believe you testified earlier that
17 voter registration applicants have to attest to their
18 citizenship as U.S. citizens when they complete a voter
19 registration application; is that correct?

20 A. Actually, I believe you're putting words in my
21 mouth. I believe you're the one that pointed out that
22 that is on the application, and you asked me to verify
23 that I saw it on the application. And yes, I did see it
24 on the application.

25 Q. And you believe it to be a requirement of voter

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1 registration applicants in Texas?

2 A. I believe that it's a question asked and that
3 people certify that they're telling the truth.

4 Q. It is a requirement that Texas has the voter
5 registration applicants indicate that they are U.S.
6 citizens; is that correct?

7 A. They have to certify that they are a U.S.
8 citizen.

9 Q. Are you aware that Texas law requires county
10 election officials to review documents received from
11 court listing people who are excused from jury duty
12 because they are not U.S. citizens?

13 A. I'm not aware of that, and I'm not sure how
14 that applies to the testimony we're talking about today.

15 Q. But -- but in answer --

16 A. I'm not aware of it, no.

17 Q. Do you have any evidence, are you aware of any
18 evidence that non-U.S. citizens have registered to vote
19 in Texas?

20 A. The word "evidence" is a very broad word.
21 There are many pieces of articles that you have in the
22 information that was released to you of press releases
23 from across Texas of multiple news agencies that
24 reported incidents of people that were illegal to vote
25 that had been reported that were voting.

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1 Q. Was Senate Bill 363 referred to the State
2 Affairs Committee?

3 A. I don't know.

4 Q. Was Senator Duncan the chair of the committee
5 at that time?

6 A. Of what committee?

7 Q. The State Affairs Committee?

8 A. Well, likely was, I don't -- I'm not sure, but
9 I'll suspect he probably was.

10 Q. Do you recall discussing Senate Bill 363 with
11 Senator Duncan at any time?

12 A. No, I don't remember that at all.

13 MS. WESTFALL: Could you mark this? And
14 this is a highly confidential document so the testimony
15 will be designated as highly confidential under the
16 protective order.

17 (Exhibit 25 marked for identification.)

18 Q. (By Ms. Westfall) You've been handed what's
19 been marked as Exhibit 25. Do you recognize this
20 document?

21 A. I do not recognize the document.

22 Q. Do you see that it is an e-mail from Dan
23 Patrick to a number of senators including you?

24 A. Okay.

25 Q. I'm sorry?

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1 A. Yes.

2 Q. Do you see that it reads, "Dear Senators," and
3 then there's two paragraphs, and then there's a line on
4 the bottom of page TX00009987, is the Bates stamp. Do
5 you see that line that starts, "In view of our
6 discussion on Voter ID"?

7 A. The very last line, "In view of our
8 discussion"?

9 Q. Yes, and then --

10 A. I see it there, yes.

11 Q. -- it continues on to the next page. Could you
12 just review that and let me know when you've had a
13 chance to look at that sentence?

14 A. Okay, I've read it.

15 Q. And is Senator Patrick expressing the view that
16 Voter ID and immigration are the same issue, one and the
17 same or connected issues? Do you see --

18 A. I think you probably have to ask him that.

19 Q. -- he's expressing that opinion? But do you
20 see that this document, TX00009987 through 88, Exhibit
21 25, contains an e-mail from Senator Patrick with that
22 sentiment?

23 A. I see that this is represented that this is an
24 e-mail from him saying that.

25 Q. Do you agree with that view that is expressed

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1 in the e-mail?

2 A. That is his view.

3 Q. Do you agree with that view?

4 A. That is his view.

5 MR. CLAY: Objection, this
6 mischaracterizes the e-mail.

7 MS. WESTFALL: I'm going to object to your
8 response as unresponsive.

9 Q. (By Ms. Westfall) Do you share the view
10 expressed in Exhibit 25 that Voter ID and immigration
11 are the same issue or connected?

12 MR. CLAY: Same objection,
13 mischaracterizes the e-mail.

14 MS. HALPERN: You can answer the question.

15 A. I do not share that view.

16 (Exhibit 26 marked for identification.)

17 Q. (By Ms. Westfall) You've been handed what's
18 been marked as Exhibit 26. Do you recognize this
19 document?

20 A. Do not.

21 MS. WESTFALL: It is Highly Confidential
22 and the testimony pertaining to this document, which is
23 Exhibit 26, at TX00086376 through 3788, will be
24 designated as Highly Confidential.

25 Q. (By Ms. Westfall) Turn your attention to the

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1 second page of this document at TX00086377. Do you see
2 that there's a quote from you about the 2009 session?

3 MS. HALPERN: Can you be specific as to
4 where?

5 Q. (By Ms. Westfall) The second page, the second
6 page about halfway down on the left, where it says,
7 "Fraser introduces a similar bill in 2009 that passed in
8 the Senate, but it died in the House." And then it goes
9 on to quote you as saying, "We're going to attempt to go
10 ahead and try to move it earlier this year." Do you see
11 that paragraph?

12 MS. HALPERN: Counsel, I'm going to ask
13 that you let him read the whole article.

14 MS. WESTFALL: I'm directing his attention
15 to a quoted portion of the article. I'm not going to
16 examine on anything other than the quoted portion.

17 MR. HALPERN: I see that.

18 MS. WESTFALL: Just to move things along.

19 A. Okay.

20 Q. (By Ms. Westfall) Do you see that this article
21 is dated November 14, 2010?

22 A. Yes.

23 Q. And it's the Abilene Reporter News?

24 A. Yes.

25 Q. Is that correct? And turning your attention to

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1 the paragraph in which you are quoted as saying, "We're
2 going to attempt to go ahead and try to move it earlier
3 this year," referring to Voter ID --

4 A. Yes.

5 Q. -- do you believe that was an accurate quote by
6 the reporter?

7 A. Yes.

8 Q. And at this point in time, in November 2010,
9 what -- did you have a strategy for moving Voter ID
10 forward in the Senate so that it could actually get
11 passed into law?

12 A. We had already passed it once. So my
13 assumption is we could pass it again.

14 Q. Did you have any -- and in 2009, Senate Bill
15 362 failed in the House, correct?

16 A. Yes.

17 Q. Did you have any strategy at this point in
18 November 2010 for moving Voter ID through both the
19 Senate and the House and having it enacted into law?

20 A. It was not my strategy, but there was a
21 different -- a different bill sponsor in the House. And
22 it was my belief that the problem with the bill the year
23 before was the bill sponsor.

24 Q. Was another problem that you alluded to in this
25 article that the bill did not move quickly enough

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1 through the Senate to get to the House in time to, for
2 the House to likewise pass it?

3 A. Could you show me where that says that?

4 Q. I'm referring to the paragraph where you say,
5 "We're going to attempt to try to move it earlier this
6 year." Did you see that as part of the strategy to --

7 A. I see that, but no, I'm not -- what point
8 you're trying to make is not correct. The words speak
9 for themselves is that we're going to try to move it
10 quicker. It doesn't say anything about the Senate. It
11 refers to the House.

12 Q. Are you aware of any research conducted before
13 the 2009 session to determine a procedure to increase
14 the likelihood of Senate passage of a Voter ID bill?

15 A. Ask that question again.

16 Q. Sure. Are you aware of any research about
17 Senate procedure that was conducted in advance of 2009
18 to ensure that Voter ID would be passed in the Senate?

19 A. No.

20 Q. Are you aware of Senator Tommy Williams having
21 conducted any research about how -- about procedures to
22 put into place in the Senate Rules to ensure passage of
23 Voter ID in the Senate --

24 A. No.

25 Q. -- in 2009?

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1 A. No.

2 Q. Did Senator Williams spearhead -- strike that.

3 I believe you testified earlier about the
4 Rule 5.11 in the 2009 rules. Do you remember that rule?

5 A. Yes.

6 Q. How did that rule come to be included in the
7 Senate Rules in 2009?

8 A. I -- I have previous testimony that I'm not
9 aware of that other than I was not a party to putting it
10 in.

11 Q. So you had no involvement whatsoever in any
12 research to figure out those procedures?

13 A. No.

14 Q. Is that correct?

15 A. No.

16 Q. Do you know who was involved in devising that
17 procedure in the Senate?

18 A. No.

19 Q. Was Senator Williams at all involved in
20 devising that procedure in 2000 --

21 A. You need to ask Senator Williams that.

22 Q. Are you aware of Senator Williams having any
23 involvement in devising that procedure?

24 A. No.

25 Q. Did Senator Williams introduce the Senate

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1 resolution to include Rule 5.11 in the 2009 rules?

2 A. The rule was presented by Senator Eltife that
3 is the Chairman of Administration.

4 Q. Are you certain of that?

5 A. No. Oh, I'm -- I'm certain that Senator Eltife
6 is the one that presents the rules.

7 Q. Did Senator Williams introduce a Senate
8 resolution to modify the rules in 2009 to include Rule
9 5.11?

10 A. I don't -- I don't know, but I don't think so,
11 because the rules have to be adopted by the Senate as a
12 whole on the Floor of the Senate, and to my knowledge,
13 I've never seen -- I don't know of an amendment being
14 offered on the Floor.

15 MS. WESTFALL: Would you mark this?

16 (Exhibit 27 marked for identification.)

17 Q. (By Ms. Westfall) Senator, you've been handed
18 what's been marked Exhibit 27. Do you recognize this
19 document?

20 A. No.

21 Q. Is this the Senate Journal from January 14,
22 2009?

23 A. Appears to be.

24 Q. Turning your attention to the third page of
25 this document, which is Page 23 of the Senate -- this

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1 particular Senate journal. I'd like to turn your
2 attention to Senate Resolution 14. Senator, does
3 Exhibit 27 refresh your recollection as to Senator
4 Williams' involvement in Senate Resolution 14?

5 A. No, it does not.

6 Q. Do you know anything about the circumstances
7 under which Senate Resolution 14 was introduced?

8 A. No.

9 Q. Or the reason for it?

10 A. No.

11 Q. You can put aside this exhibit. We're done for
12 the time-being. When you were laying out a bill in
13 committee, do you do your best to be accurate in your
14 answers?

15 A. Yes.

16 Q. Truthful?

17 A. Yes.

18 Q. Provide complete answers?

19 MS. HALPERN: Objection.

20 Q. (By Ms. Westfall) You may answer.

21 A. You'd have to give a definition of what a
22 complete answer is. That, obviously, you answer the
23 question that is asked.

24 Q. If you say something you later learn is
25 erroneous, is there a mechanism by which you can correct

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1 the record?

2 A. You can correct what you said and correct it.

3 Q. But after you said something on the Senate
4 Floor and you learn that it's wrong, can you correct the
5 official record later, or is there not a mechanism for
6 that?

7 A. You're asking again a very broad question,
8 because it depends on the procedures going on. And if
9 the procedure's already been resolved, that I could
10 enter a statement into the record that something was
11 said incorrect and you could enter something in the
12 record to correct that. So the answer I guess is yes,
13 you can.

14 Q. Did you make any corrections to the record of
15 your statements concerning Senate Bill 362?

16 A. I'm sorry, I don't remember.

17 Q. Did you make any corrections to the record of
18 your statements about Senate Bill 14?

19 A. Also, I don't remember.

20 Q. Earlier in this deposition you testified that
21 Senate Bill 362 made you feel, quote, uncomfortable. Do
22 you remember that testimony?

23 A. Yes.

24 Q. Why were you uncomfortable about Senate Bill
25 362?

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1 A. That I considered 362 a starting place, but it
2 lacked, like many things in the Legislature, it didn't
3 do everything that I'd liked to have seen done, which I
4 was in favor of a full photo ID.

5 MS. WESTFALL: Could you mark this?

6 (Exhibit 28 marked for identification.)

7 Q. (By Ms. Westfall) Senator, you've been handed
8 what's been marked as Exhibit 28. Do you recognize this
9 document?

10 A. No.

11 Q. Senator, is there anything in the record
12 related to your discomfort with Senate Bill 362?

13 A. Probably not.

14 Q. Turning back to Exhibit 28, which is highly
15 confidential, and the questions related thereto are
16 deemed highly confidential. Exhibit 28 is Texas
17 00265592 through 96. Do you see the chart on the second
18 page of this document?

19 A. Yes.

20 Q. Okay. The first page of this document, is it
21 an e-mail?

22 A. You're asking me?

23 Q. Yes.

24 A. I don't do e-mails, so I don't know the answer.

25 Q. Do you see that the Janice McCoy is listed as a

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1 recipient of this document?

2 A. Yes.

3 Q. And she is your former chief of staff who
4 worked on Voter ID issues, right?

5 A. Yes.

6 Q. And this document is dated January 21, 2011,
7 correct?

8 A. Yes.

9 Q. It was shortly before the Senate's
10 consideration of Senate Bill 14, right?

11 A. Yeah.

12 Q. And so turning your attention back to the
13 chart, have you ever seen a chart like this?

14 A. No.

15 Q. And does this chart appear to compare
16 provisions of the Indiana photo ID law, Georgia photo ID
17 law and Senate Bill 14 as introduced and Texas current
18 law?

19 A. It appears.

20 Q. Would you mind taking a look at the row
21 entitled "Provisional Ballot," and let me know when
22 you've had a chance to look at?

23 A. Yes.

24 Q. I believe you testified earlier about
25 provisional ballot procedures. Does this chart indicate

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1 that Senate Bill 14 as introduced would require a voter
2 who didn't have appropriate ID to return to cast a
3 provisional ballot and then return within six days with
4 appropriate ID in order to ensure that ballot would be
5 counted?

6 A. It appears to stay that.

7 Q. And does it indicate that under then current
8 law, if the voter -- Texas current law, that if the
9 voter had no ID, the voter would cast a provisional
10 ballot and the registrar would confirm eligibility
11 within seven days and then count that ballot?

12 A. That's what it says, yes.

13 Q. Was that your understanding of current law
14 about provisional ballot when you were considering
15 Senate Bill 14?

16 A. I think I've advised that you asked me the
17 question, and I think I told you that I wasn't totally
18 sure on provisions on current law. I knew that on
19 Senate Bill 14 that we had the bill to cast a
20 provisional ballot and they had to return within six
21 days with an ID in order to vote.

22 Q. So based on information in the chart which you
23 just testified you believe is correct --

24 A. I didn't say that I believe this is correct.
25 You're representing that someone sent this to someone

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1 else. I haven't seen it, and I haven't represented that
2 it's correct.

3 Q. At any time during consideration of Senate Bill
4 14, do you recall receiving information about the
5 current procedures related to provisional ballots and
6 people who didn't -- voters who did not have appropriate
7 ID?

8 A. No.

9 Q. Assuming that this chart lays out an accurate
10 comparison of Texas current law and Senate Bill 14, do
11 you think it is a significant change in provisional
12 ballot procedure between the then current law and Senate
13 Bill 14?

14 A. Yes, because we had a significant change in the
15 ID procedures and that if someone is going to vote, they
16 had to have a photo ID. If they didn't have that and
17 they still wanted to vote, they could vote
18 provisionally, but they had to come back and show their
19 photo ID. So yes, it was a change.

20 Q. And before under previous law, the voter would
21 not have to return to the registrar a second time?

22 A. In the previous law we did not have a photo ID.

23 Q. But in answer to my question, the voter would
24 not need to return; isn't that correct?

25 A. And I've already told you that I'm not aware --

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1 I'm not familiar with that.

2 Q. Are you aware of whether provisional ballots
3 are paper ballots?

4 A. I'm sorry, I'm not aware of that either. I
5 don't know.

6 Q. Do you know whether the voter fills out an
7 affidavit outside of provisional ballot?

8 A. I feel sure that there's some affidavit they
9 have to do in order to file a ballot, yes.

10 Q. And county election officials ordinarily for
11 provisional ballots make a determination as to whether
12 that ballot should be counted; is that right?

13 A. That's your answer, not mine.

14 Q. You don't -- you don't know?

15 A. I don't -- no, I don't. The provisions for
16 that are set by the Secretary of State or by the local
17 counties that they have a methodology that they put in
18 place for voting for provisional, and that was not
19 dictated by the Legislature.

20 Q. Are you aware, were you aware -- strike that.
21 Were you aware at the time of considering
22 Senate Bill 14 of any need, factual need to change the
23 law as it pertained to provisional ballots?

24 A. Of course I was aware of the need to change,
25 because if you're implementing a photo ID and someone

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1 doesn't have a photo ID, we want them to be allowed to
2 vote, but they're going to have to come back and prove
3 they have a photo ID.

4 Q. But isn't it true that under Senate Bill 362,
5 the provisional ballot process was that a voter would --
6 a voter who did not have ID would vote provisionally,
7 and the county board would determine whether to count
8 that without the voter having to return to the office?

9 A. 362 was not a pure photo ID bill, and I've
10 stated before that there was things in 362 that I was
11 not in agreement with. We changed that in Senate Bill
12 14 and changed it to a pure photo ID bill.

13 Q. But do you know whether Senate Bill 362
14 included that provision, not requiring the voter who
15 cast the provisional ballot to return to the registrar?

16 A. I cannot verify that.

17 Q. Are you aware of any erroneous determinations
18 by a county election official concerning whether to
19 count a provisional ballot?

20 A. I'm sorry, I'm not -- no, I've not been
21 advised.

22 Q. Do you recall that Senator Van de Putte asked
23 you questions about the provisional ballot procedures in
24 Texas during the hearing on Senate Bill 14?

25 A. I'm still -- I do not remember that.

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1 (Exhibit 29 marked for identification.)

2 Q. (By Ms. Westfall) You've been handed what's
3 been marked as Exhibit 29. Do you recognize this
4 document?

5 A. No.

6 Q. I will represent to you that it is an excerpt
7 of the transcript of proceedings before the Texas Senate
8 on January 25, 2011, related to consideration of Senate
9 Bill 14, and that the testimony includes -- I mean the
10 transcript includes your laying out of the bill and
11 questions and answers that you received from Senators.

12 Turning your attention to Senate
13 transcript, the Senate transcript at Page 44, do you see
14 that you were asked questions by Senator Van de Putte
15 about the provisional ballot process?

16 A. What was the question?

17 Q. Do you see that you referred Senator
18 Van de Putte and her questions regarding the changes in
19 law to provisional ballots to the Secretary of State's
20 office?

21 A. Yes.

22 Q. Do you know whether there was any consideration
23 given by you or others to the consequences of changing
24 the law in Texas as it pertained to provisional ballots?

25 A. The -- in the -- the reason we referred her to

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1 the Secretary of State was because it was scheduled to
2 be one of the invited guests to testify. The questions
3 to the author come prior to that. The next person to
4 come up was the Secretary of State, and it would be
5 eligible to ask questions. At that point, if questions
6 were asked and concerns were raised, I would listen to
7 the concerns. If the concerns were valid and needed to
8 be changed, we could have addressed that by amendment.
9 So the order -- if she's raising a question, I'm saying
10 the correct place to ask that is to the next witness.

11 Q. So you referred her to the Secretary of State's
12 Office?

13 A. I didn't refer her to the Secretary of State.
14 I said the Secretary of State's Office will be
15 testifying as the next person. Once they come up, the
16 question you're asking, they can give you the clearest
17 description to make sure that I'm not inaccurately
18 telling you what the -- the question you're asking.

19 Q. In light of the change in law of provisional
20 ballots, whereas before the voter did not have to return
21 to the registrar to present any documentation, and the
22 ballot could still be counted, whereas as under Senate
23 Bill 14, the voter who cast a provisional ballot for
24 lack of ID would have to come and present ID in order to
25 ensure that that would be counted, was any consideration

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1 given to -- by the Senate to the consequences of this
2 change on voters?

3 A. Sure. I mean, there was a discussion where --
4 it's here in the record where Senator Van de Putte and I
5 had a discussion about it, and then when the Secretary
6 of State came up, it was discussed. That was -- that
7 was a point of discussion. As it's turned out that it
8 was not a problem at all, that as history has shown us
9 since we've had elections since then, we found out that
10 we have had virtually no problem with the provisional
11 ballots and that people -- there are very few of them
12 being filed, and the ones that have been filed, that it
13 has not been a problem.

14 Q. What is the basis of your knowledge?

15 A. On this?

16 Q. On the provisional ballot process?

17 A. Asking questions of the Secretary of State.

18 Q. That has happened after the bill has -- since
19 the time the bill has been implemented?

20 A. Yeah, it would be an impossible to project
21 prior to the passage of the bill what the impact would
22 be other than asking questions of the Secretary of State
23 of how they intended to implement. And by after we --
24 they explained how they had planned to implement this
25 and education of the voters, it turned out that the way

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1 we implemented it worked well.

2 Q. Did you make any changes to the bill based on
3 the testimony of representatives from the Secretary of
4 State's office with regard to provisional ballots?

5 A. I don't remember making that, and I don't
6 believe that there was an amendment that was accepted
7 for that.

8 Q. Is the voter registrar's office generally open
9 on weekends?

10 A. Voter registrar's, to register to vote?

11 Q. The county elections office, is it open on
12 weekends?

13 A. We have 254 counties, so I don't know how to
14 answer that.

15 Q. Are you aware of any county election's office
16 that's opened on the weekends?

17 A. It's not an issue. I know -- I don't -- I'm
18 sure that that was addressed and asked, but I don't have
19 an answer today.

20 Q. Are you aware of any county election's office
21 that's open outside of business hours during the week?

22 A. Once again, it's not one that I've researched.
23 I researched the one on DPS office. I didn't look at
24 registrar's office.

25 Q. Is there anything in Senate Bill 14 that

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1 requires county election offices to be opened on the
2 weekends?

3 A. To my knowledge, no.

4 Q. Or during -- outside of business hours?

5 A. To my knowledge, no.

6 Q. Was there any consideration given to extending
7 the hours of county election offices based on new
8 provisional ballot procedures?

9 A. I -- I don't remember that whether there was
10 discussion of it or not.

11 Q. Were any changes made to the provisional ballot
12 provision in the bill after the bill was referred to the
13 House?

14 A. Not to my knowledge.

15 MS. WESTFALL: Can you mark this?

16 (Exhibit 30 marked for identification.)

17 Q. (By Ms. Westfall) Senator, you've been handed
18 what's been marked as Exhibit 30, which is a highly
19 confidential document. It is TX00034516. Do you
20 recognize this document?

21 A. I do not.

22 Q. Do you see that it is sent from your chief of
23 staff, former chief of staff, Janice McCoy?

24 A. Yes.

25 Q. On April 12, 2011?

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1 A. Yes.

2 Q. And it is sent to Mr. Hebert, correct?

3 A. Appears to be.

4 Q. Do you know why -- and do you see that it
5 indicates the subject is "OAG Language"?

6 A. Yes.

7 Q. And do you see that this refers to a change in
8 provisional ballots regarding persons who have religious
9 objections to being photographed?

10 A. (Reading.)

11 Q. Do you know why -- do you see that language?

12 A. Yes.

13 Q. Do you know why the OAG was providing
14 legislative language related to Senate Bill 14?

15 A. Did not.

16 Q. Was this provision related to an exception for
17 persons with religious objection to being photographed
18 part of the Indiana photo ID law, to your knowledge?

19 A. I don't have the information on that.

20 Q. Did you have any concerns about -- did you
21 serve on the Conference Committee for Senate Bill 14?

22 A. Chaired it.

23 Q. Did you have any concerns about having an
24 out-of-bounds resolution related to Senate Bill 14?

25 A. Anytime you have an out-of-bounds resolution

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1 it's problematic, because an out-of-bounds requires a
2 two-thirds' vote to put in.

3 Q. Two-thirds' vote of both bodies?

4 A. Both bodies.

5 Q. So did you want to avoid that if possible?

6 A. Well, the -- in most cases, if there's a bill
7 that you're concerned about getting two-thirds' vote,
8 that the answer would be yes.

9 Q. Did you have concerns about getting two-thirds
10 of a vote for the out-of-bound resolution in the Senate?

11 A. This isn't -- this is not from me. It's not to
12 me. And I told you that I haven't seen this. So
13 assuming that I had concerns about it implies that I
14 knew about it, and I've just said that I don't -- you
15 know, this -- I have not seen this.

16 Q. After Senate Bill 362 passed the Senate, was it
17 reported in the press that Representative Smith was
18 pursuing a modification to Senate Bill 362 that would
19 involve allowing the voter to use an affidavit?

20 A. I'm not advised and you'd have to ask
21 Representative Smith that.

22 Q. Was the OAG office involved in drafting any
23 other provisions for Senate Bill 14 that you're aware
24 of?

25 A. Not to my knowledge.

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1 Q. Besides Exhibit 30?

2 MS. HALPERN: Actually, let me enter an
3 objection here and now. This witness has not verified
4 for you that OAG drafted this language, and I understand
5 that the subject line in the e-mail says OAG language.
6 But it is also a fact that e-mails go back and forth and
7 the content changes and the subject line never changes,
8 and I'm going to object that there is no foundation that
9 the OAG drafted the actual language that appears on
10 Exhibit 30, and this witness has certainly not confirmed
11 that.

12 MS. WESTFALL: Ms. McCoy testified to it,
13 but I appreciate your comments.

14 Q. (By Ms. Westfall) I believe you testified
15 earlier that you're aware that the record on
16 consideration -- of consideration of Senate Bill 14
17 would be provided to the Department of Justice; is that
18 correct?

19 A. Would you repeat that, please?

20 Q. I believe you testified earlier in this
21 deposition that you were aware that the legislative
22 record of the consideration of Senate Bill 14 would be
23 provided to the Department of Justice as part of the
24 preclearance process; is that correct?

25 A. I don't know that's entirely true, because I

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1 believe there was two routings to go, either
2 preclearance or a three-judge panel, so I don't think
3 that I said that everything was going to -- to
4 preclearance.

5 Q. Did -- was it your belief that it would go --
6 that the public legislative record would go either to
7 the Department of Justice or a three-judge panel as part
8 of the Section 5 review process?

9 A. I did believe that it would go one of the two
10 places.

11 Q. Did that make you consider how -- how -- what
12 sort of statements you made on the Senate Floor?

13 A. I was aware that everything that I was saying
14 was part of public record.

15 Q. So you had to be careful; is that correct?

16 A. You're putting words in my mouth.

17 MS. HALPERN: Objection.

18 MR. CLAY: That mischaracterizes his
19 answer.

20 Q. (By Ms. Westfall) Did you --

21 A. I just said that I was aware that everything I
22 said was part of public record.

23 Q. Did you provide drafts of your Floor statements
24 to the Office of the Attorney General before you made
25 them related to Senate Bill 14?

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1 A. No --

2 MS. HALPERN: Let me stop. Stop. I'm
3 going to object on the grounds of attorney-client,
4 because if he did that, then he did that because he was
5 consulting a legal opinion, and so I'm going to direct
6 him not to answer that.

7 MS. WESTFALL: Okay.

8 Q. (By Ms. Westfall) What is the base -- factual
9 basis of your -- well, strike that.

10 I believe you testified earlier in this
11 deposition that according that according, to use your
12 words, the Democrats wanted to deal with Senate Bill 14
13 early in the session and get it over with. Is that --
14 was that your testimony?

15 A. No. It's not what I said. I said that
16 there -- the Democrats and Republicans both were in
17 agreement that we should go ahead and move Senate Bill
18 14, because they believed the likelihood that it was
19 going to pass and go ahead and get it out of the way is
20 I think is the way --

21 Q. What is the basis of your knowledge and
22 testimony?

23 A. Conversations with other Senators.

24 Q. And can you identify, not the content of the
25 conversation, but the Senators by name?

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1 A. I would claim privilege on that because of the
2 communications between other Senators.

3 Q. Do you recall that Senator Van de Putte sent
4 Senator Duncan a letter objecting to the timing of the
5 Senate's consideration of Senate Bill 14 because there
6 was not enough notice?

7 A. No.

8 Q. Do you recall that, notwithstanding that the
9 Senate's consideration of Senate Bill 14 was not as
10 lengthy in time as Senate Bill 362, that bill opponents
11 expressed strong opposition to the bill even though they
12 knew they didn't have the votes to stop it? Do you
13 recall that?

14 A. No.

15 MS. HALPERN: Counsel, I'd like a five-
16 minute break to confer with the witness before you ask a
17 question.

18 MS. WESTFALL: Sure.

19 (Recess from 4:25 p.m. to 4:42 p.m.)

20 (Exhibit 31 marked for identification.)

21 Q. (By Ms. Westfall) You've been handed what's
22 been marked as Exhibit 31. It is a highly confidential
23 document, TX00262650 through TX00262652. Do you
24 recognize this document? Do you recognize this
25 document?

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1 A. No.

2 Q. Have you ever seen it before?

3 A. No.

4 Q. Do you see that this an e-mail dated January
5 22, 2011?

6 A. Yes.

7 Q. And it's from -- it embeds an e-mail that is
8 from Mr. Hebert to a number of recipients, including
9 Janice McCoy?

10 A. Yes.

11 Q. Did Ms. McCoy -- although you just testified
12 you've never even this document before, Exhibit 31, did
13 Ms. McCoy share any of the contents or messages that
14 were conveyed by Mr. Hebert to her?

15 A. No.

16 Q. Did you want Senate Bill 14 to be enforceable?

17 A. Yes.

18 Q. To be enforceable at the time it was enacted,
19 it needed to be precleared under Section 5 of the Voting
20 Rights Act; is that correct?

21 A. I believe I just testified that I think we had
22 two choices, either preclearance or three-judge panel.

23 Q. And so it was either administrative
24 preclearance through the Department of Justice or
25 judicial preclearance through the three-judge panel; is

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1 that right?

2 A. That's correct.

3 Q. Did you have any concerns in January of 2011
4 about the prospects of preclearance for Senate Bill 14?

5 A. No.

6 MS. HALPERN: Objection, legislative
7 privilege. You can answer.

8 A. No.

9 Q. (By Ms. Westfall) Did you believe at that time
10 that there was -- that preclearance was doubtful?

11 A. No.

12 Q. Why were you confident that it would be
13 precleared?

14 A. That based on looking at the opinion of the
15 U.S. Supreme Court and what had been precleared in
16 Georgia, that I believed our bill was both
17 constitutional and would be precleared.

18 Q. Do you see that Mr. Hebert in Exhibit 31
19 suggests adding forms of ID that had been listed in
20 Georgia's law related to IDs issued by the federal
21 government, state government or local government?

22 A. Mr. Hebert is not my counsel and that I had no
23 dealings with him.

24 Q. But turning back to my question, do you see
25 that he made that recommendation in Exhibit 31?

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1 A. I see that it is on his paper, yes.

2 Q. Were those forms of ID from Georgia's law
3 related to IDs issued by the federal government, state
4 government or local government added to Senate Bill 14
5 during the legislative process?

6 A. No.

7 Q. Why not?

8 A. The bill as we had laid it out we believed was
9 both constitutional and would be precleared.

10 Q. Do you believe that adding those forms of ID,
11 either ID issued by the federal government, state
12 government or local government, would have interfered
13 with the effectiveness of Senate Bill 14 in preventing
14 in-person voter impersonation?

15 A. We were very comfortable with the bill, Senate
16 Bill 14, as filed.

17 Q. In response to my question, and I would move
18 to -- as --

19 MS. WESTFALL: I object as unresponsive to
20 your response.

21 Q. (By Ms. Westfall) Would adding those forms of
22 ID have interfered with the effectiveness of Senate Bill
23 14 in preventing in-person voter impersonation?

24 A. I believe that Texas needed a clear photo ID
25 bill.

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1 MS. WESTFALL: I would object as
2 nonresponsive.

3 Q. (By Ms. Westfall) And ask you again, do you
4 believe that adding IDs issued by the federal
5 government, state government or local government would
6 have interfered with the effectiveness of Senate Bill
7 14?

8 A. I do not believe the bill would have been as
9 effective because we believed we needed to implement a
10 clear photo ID bill.

11 Q. And the Georgia law and the suggestions of
12 Mr. Hebert were photo IDs, correct?

13 A. I'm sorry, I don't -- well, I don't know.

14 Q. Do you know whether --

15 A. I haven't studied this.

16 Q. My apologies. Do you know whether the Georgia
17 photo ID law allows for the use of photo ID issued by
18 the federal government?

19 A. I do not know.

20 Q. Do you know whether the Georgia photo ID law
21 allows for the use of photo ID issued by the state
22 government?

23 A. I'm sorry, I do not know.

24 Q. Do you believe that federal employee IDs are
25 secure?

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1 A. I'm sorry, I do not know.

2 Q. Do you know whether some federal employee IDs
3 encrypt the fingerprint of the cardholder into the card?

4 A. I do not know that.

5 Q. Do you believe or know whether some federal ID
6 employee IDs are more secure than state-issued forms of
7 photo ID?

8 A. I do not know that.

9 Q. Turning your attention back to the Committee of
10 the Whole debate in January 25, 2011, which is Exhibit
11 29. Turning your attention to page 35 of the debate.
12 And actually, it starts at 34. Can you see -- do you
13 see that Senator Van de Putte asked you what Senate Bill
14 14 was modeled after and whether it was modeled after
15 the Indiana law?

16 A. Would you like to point out where it says that?

17 Q. Certainly. At the bottom of page 34, beginning
18 at Line 21, if you could just review that question from
19 Senator Van de Putte and your answer on page 35. And
20 let me know when you've had a chance to do that, I
21 appreciate it. And Senator, feel free to unclip that if
22 you're not able to read.

23 A. Okay.

24 Q. Do you see that Senator Van de Putte asks
25 whether Senate Bill 14 was modeled after the Indiana

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1 law?

2 A. I don't believe I see the word "modeled."

3 Q. Well, at the top of Page 35, that, "this year's
4 model is fashioned after the Indiana law," do you see
5 that part of her question?

6 A. Okay.

7 Q. And she was asking, was she not, whether Senate
8 Bill 14 was based on modeled after the Indiana photo ID
9 law, correct?

10 A. I believe my answer is that we've had two years
11 later that we've had a Supreme Court decision and a
12 preclearance of Georgia, and with that experience
13 that -- and also the recommendation of the -- the
14 Baker-Carter Commission, that we have decided to go with
15 the photo -- pure photo ID bill.

16 Q. Do you believe that your answer responded to
17 her question?

18 A. She said thank you. I'm assuming it did.

19 Q. Turning your attention to page 45. Actually,
20 begins at page 44. Do you see that Senator Van de Putte
21 asked you whether there had been any studies done to
22 determine whether, under current Texas voter law, there
23 would be an impact on classes of Latino or African
24 American voters? And what was -- do you see that?

25 A. Uh-huh.

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1 Q. You have to just say "yes" for the court
2 reporter.

3 A. Yes.

4 Q. And what was your response to her question?

5 A. You would like me to read the response?

6 Q. No, could you just summarize your response?

7 A. I think my response is, is that the bill that
8 we're laying out is modeled after bills that was
9 approved by the Supreme Court and the Department of
10 Justice in Georgia. We're providing free access cards,
11 and we believe that to protect the confidence in
12 election in making sure that only eligible voters are
13 counted.

14 Q. Do you believe that your response answers
15 Senator Van de Putte's question?

16 A. She didn't appear to -- that it did not.

17 Q. So is your testimony that you did answer her
18 question?

19 A. I believe I answered her question.

20 Q. Turning to page 162 of the transcript. Do you
21 see that Senator West asked you a question about whether
22 there was research conducted on the burdens of photo ID
23 and whether they may fall disproportionately on racial
24 minorities on page 162?

25 A. Would you show me where it says that?

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1 Q. Sure. It begins on Line 17 of 162.

2 A. Yes.

3 Q. And what was your response to Senator West's
4 question?

5 A. The -- I quoted the results of the current poll
6 had been done two weeks before the bill was heard
7 showing that if you ask the public -- and if they were
8 African American, do you believe that a valid photo ID
9 -- a valid photo ID would -- should be allowed to vote,
10 82 percent of African American people responded
11 positively, yes, we should implement that.

12 Q. Why did you respond to Senator West's question
13 with polling data that you just described?

14 A. He was asking if the polling data was broken
15 down by ethnicity and had both African American and
16 Hispanics responding.

17 Q. How did you believe that that was responsive to
18 his question about how burdens of photo ID requirements
19 fall on racial minorities?

20 A. If you ask an African American or Hispanic if
21 they believe that it should be implemented and they say
22 yes, it does, you -- the assumption is that they agree
23 with it.

24 Q. In other words, that the polling data indicated
25 there was no effect, is that your testimony?

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1 A. The testimony is as -- as we've, you know,
2 explored all day, Texas has no ability for us to do
3 independent studies. The way you do studies are either
4 testimony that happens with a legislation or a poll that
5 is conducted by someone else. This is a poll that's
6 conducted two weeks prior to the bill being heard. I
7 was giving him the data of the poll.

8 Q. And you -- and is it your testimony the data
9 from the poll was responsive to Senator West's question?

10 A. I believe it is. He accepted it.

11 Q. Turning to Page 159 at Line 16. Do you see
12 that Senator West asked you whether there was any
13 prosecution of fraud in Texas associated with
14 identification?

15 A. (Reading.)

16 Q. Senator, do you see that Senator West requested
17 information about prosecutions of fraud associated with
18 that?

19 A. I do not.

20 Q. On page 159?

21 A. No.

22 Q. You don't see it on page 159 at Line 16?

23 A. No. Okay. I see whether --

24 Q. That's exactly right. That's where it starts.

25 A. What was your question?

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1 Q. Do you see your response to that question?

2 A. I do.

3 Q. What was your response?

4 A. "I believe the bill that we're bringing forward
5 today will clearly say when you walk in the voting
6 booth, you identify yourself as who you say you are, and
7 the bill that we're bringing forward, we believe will
8 pass the Supreme Court of the United States and be
9 approved by the Justice Department."

10 Q. Do you believe that your response was
11 responsive to Senator West's question?

12 A. It must have been because he did respond and
13 went to the next question.

14 Q. Is that the only reason why you think it was
15 responsive?

16 A. Well, other than I know Senator West very well,
17 and he's not bashful about asking a second question.

18 Q. During the Senate's -- and you can put away
19 that exhibit for the time-being. During the Senate's
20 consideration of Voter ID legislation, were there
21 requests for information about the racial composition of
22 Texas voters that did not possess a driver license?

23 A. I believe there was a question asked of DPS
24 when they were testifying.

25 Q. Did you make any requests yourself?

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1 A. No.

2 Q. When did you first become aware of requests for
3 information about the racial composition of Texans who
4 lacked -- Texas voters who lacked a driver license?

5 A. Questions that were asked by -- by opponents of
6 the bill during the hearing.

7 Q. And did you first learn about that during
8 consideration of Senate Bill 362?

9 A. I think those questions have been asked through
10 three sessions, through 218, 362 and Senate Bill 14.

11 Q. Did you prepare for the Committee of the Whole
12 hearing on Senate Bill 14 by meeting with anyone from
13 the Secretary of State's Office?

14 A. No.

15 Q. Did you meet with Ann McGeehan in January 2011,
16 before the Committee hearing?

17 A. Not to my knowledge.

18 Q. Does the Secretary of State maintain data about
19 Texas voters who have Hispanic surnames?

20 A. I'm sorry, I don't know that answer.

21 Q. Who is Coby Shorter?

22 A. He was an employee of the Secretary of State.

23 Q. Is he the Deputy Secretary of State?

24 A. To my knowledge he is.

25 Q. Was he at the time of consideration of Senate

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1 Bill 14?

2 A. I believe he was, yes.

3 Q. Before the Committee of the Whole hearing on
4 Senate Bill 14, were you standing outside of the Senate
5 chamber with Senator Williams before the hearing?

6 A. There's no way I would remember that.

7 Q. Do you recall that during the Committee of the
8 Whole consideration of Senate Bill 14, that Ann McGeehan
9 testified as a resource witness?

10 A. In 2011, Senate Bill 14?

11 Q. Yes.

12 A. I'm sorry, I don't remember.

13 (Exhibit 32 marked for identification.)

14 Q. (By Ms. Westfall) You've been handed what's
15 been marked as Exhibit 32. Do you recognize this
16 document?

17 A. No.

18 Q. Turning your attention to pages -- I will
19 represent for the record that Exhibit 32 is a transcript
20 of the Committee of the Whole, Senate, January 25, 2011,
21 and it is an excerpt that includes Ann McGeehan's
22 testimony. Do you see that on pages 446 of this
23 transcript, excerpted transcript, at the bottom of the
24 page --

25 A. Okay.

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1 Q. -- it indicates that Ms. McGeehan indicates
2 that Senator Williams had approached her earlier to see
3 if she could do some comparisons to try to focus in on
4 which registered voters don't have or haven't been
5 issued, and it follows on to page 447, a driver license
6 or a personal ID number?

7 A. Can you show me where you're starting?

8 Q. Certainly. It's page 446 at Line 23.

9 MS. HALPERN: 446?

10 MS. WESTFALL: 446 at page -- Line 23.

11 Q. (By Ms. Westfall) Have you found that the
12 testimony?

13 A. Yes.

14 Q. Do you recall that Senator Williams made this
15 request --

16 A. No.

17 Q. -- of Ann McGeehan?

18 A. No.

19 Q. You know nothing about it sitting here today?

20 A. No, no.

21 Q. Do you think it was appropriate for Senator
22 Williams to ask for this information about how many
23 Texas voters had a driver license?

24 A. Senator Williams is a Senator, and he has the
25 right to ask for any information he wants to.

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1 Q. Do you think it's desirable for Senators to
2 have information about the bills effects before the
3 Senate passes a bill?

4 A. Every Senate has the right to seek information.

5 Q. Do you think it's a good idea to do so on the
6 effects of a bill?

7 A. If the senator thinks it's a good idea and
8 they're looking for information, yes, it's a good idea.

9 Q. And do you believe that Texans deserve to have
10 access about information that indicates a bill's effects
11 before the legislature enacts that bill and before the
12 governor signs it into law?

13 MS. HALPERN: Objection, vague.

14 Q. (By Ms. Westfall) You may answer.

15 A. You know, obviously, any bill that's passed,
16 you want to make sure that you have any information that
17 is available.

18 Q. So just to be clear, before this -- before the
19 hearing on the Committee of the Whole on Senate Bill 14,
20 had you known that Senator Williams was going to request
21 this analysis from the Secretary of State's Office?

22 A. No.

23 Q. Was this the first time in this hearing that
24 you heard about this request for information from the
25 Secretary of State's Office?

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1 A. Yes.

2 Q. Are you aware of any other requests made to the
3 Secretary of State's Office for the number of voters
4 without a driver license?

5 A. No.

6 Q. Are you aware of any requests of the Secretary
7 of State's Office for a list of Texas voters with
8 Hispanic surnames?

9 A. Let me clarify. The Secretary of State's
10 Office, through the testimony through three different
11 sessions, that this data is generally not kept by the
12 Secretary of State. The Secretary of State wouldn't
13 have access to information on who had driver's license,
14 who didn't. The information that they would have is
15 that when they registered to vote, whatever document
16 they used to -- to register to vote. And that I think
17 that the data that came back, all they could come up
18 with is that this many used the driver's license, this
19 used their birth certificate, this many used, you know,
20 their passport, and, but it didn't show how many people
21 in Texas had driver's license.

22 Q. After the hearing, did you or Janice McCoy, to
23 your knowledge, discuss with Senator Williams or his
24 staff Senator Williams' request information from Ann
25 McGeehan?

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1 A. To my knowledge, no.

2 Q. Did the Secretary of State's Office ever
3 respond to Senator Williams' request for the number of
4 voters without a driver license?

5 A. I'm not aware.

6 Q. So your office never received any analysis?

7 A. I have seen an analysis of the information they
8 had of how people were signed up, so I'm assuming that
9 came from the Secretary of State's Office. I have seen
10 those numbers, but they're inconclusive, and they --
11 they do not prove who all has driver's license. It just
12 shows the number of people that used driver's license to
13 register to vote.

14 Q. And that set of data relates to all of the
15 registered voters and whoever had indicated on their
16 voter registration application they had a driver
17 license --

18 A. Yes.

19 Q. -- is that correct?

20 A. Yes.

21 Q. And that was only required to be provided by
22 applicants since the Help America -- since the Help
23 America Vote Act was implemented in Texas in 2006?

24 A. I believe that is correct. When HAVA was
25 implemented, I believe they started keeping up with how

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1 people -- what document they've used to register to
2 vote.

3 Q. Do you know whether Senator Williams or his
4 staff ever followed up with the Secretary of State's
5 Office to get information about the number of registered
6 voters without a driver's license?

7 A. I don't know.

8 Q. Did you ever discuss Senator Williams' request
9 with any other Senators?

10 A. No.

11 Q. Did you ever discuss Senator Williams' request
12 with the Lieutenant Governor and his staff?

13 A. Not to my knowledge.

14 Q. Did you ever discuss Senator Williams' request
15 with any House member or his or her staff?

16 A. Not to my knowledge.

17 MS. HALPERN: Where are we on time?

18 MS. WESTFALL: Let's go off the record
19 while he --

20 MS. HALPERN: You have one more
21 questioner, right?

22 (Off the record while time is computed.)

23 THE REPORTER: 5 hours and 50 minutes.

24 (Exhibit 33 marked for identification.)

25 Q. (By Ms. Westfall) You've been handed -- you've

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1 been handed what's been marked as Exhibit 33, Senator.

2 A. What?

3 Q. You've been handed what's been marked as
4 Exhibit 33, which is Texas 00107733 through Texas
5 00107735. Do you recognize this document?

6 A. No.

7 Q. Have you ever seen this document before?

8 A. No.

9 Q. Have you ever seen -- turning your attention to
10 the third page of this document which has Question,
11 Discussion and Conclusion. Have you ever seen any of
12 these numbers before today?

13 A. I do believe I've seen the numbers on the back
14 of the page, yes.

15 Q. Do you see that this relates to voters without
16 a driver license number or ID number or who matched a
17 DPS record?

18 A. Yes.

19 Q. So this is different from the analysis you just
20 testified to involving voters who do not indicate a
21 driver license number when they registered; is that
22 correct, to vote?

23 MS. HALPERN: Objection, misstates the
24 evidence.

25 Q. (By Ms. Westfall) You may answer.

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1 A. I'm not -- I'm not sure of the answers. I
2 don't know the answer. It was a cross-reference, but
3 the -- what we deemed from -- and I'm actually not sure
4 I've ever seen this, but the information that I have
5 seen showed that it was inconclusive, and the Secretary
6 of State didn't have the ability to determine how many
7 people had driver's license.

8 Q. Have you ever seen any analysis or discussed
9 any analysis of a cross-referencing of the Texas voter
10 registration database with the DPS database?

11 MS. WESTFALL: Could we go off the record?

12 MR. SCOTT: Yeah, we've got something to
13 give to you so he can be released. So off the record.

14 (Recess from 5:11 to 5:12 p.m.)

15 MS. WESTFALL: Back on the record.

16 Q. (By Ms. Westfall) Senator, did you ever, when
17 you were -- during the time of consideration of Senate
18 Bill 14, receive any information from the Secretary of
19 State's Office about its attempt to match the TEAM
20 database with the DPS driver license database to
21 determine which voters had a driver license?

22 A. The answer is no. This correspondence was
23 February 1st. So as the bill was being held in the --
24 or heard in the Senate -- the answer is no.

25 Q. So, in other words, even after the Senate had

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1 passed out and had passed Senate Bill 14 and had moved
2 it to the House, you at no time received any analysis
3 subsequent to Senate passage of Senate Bill 14 related
4 to analysis of Texas voters without a driver license?

5 A. If I did, that was five years ago, and I'm
6 sorry, I don't remember.

7 Q. Would any of this analysis or information have
8 been helpful to you during your consideration of Senate
9 Bill 14?

10 A. No. The analysis they did was nonconclusive
11 because the -- it was determined that the Secretary of
12 State did not possess data that would, you know, was
13 conclusive.

14 Q. Are you referring to the analysis of the TEAM
15 database as to who indicated a driver license number on
16 the voter registration application?

17 A. Yes.

18 Q. And that I would represent to you is different
19 from the analysis contained in Exhibit 33, which is a
20 comparison as indicated on Page 2 of the TEAM database
21 with a driver license database.

22 Turn your attention to the last page of
23 this document, at the Conclusion, can you just look at
24 that one sentence?

25 A. There's a lot of sentences. Which sentence?

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1 Q. The last sentence, the Conclusion, there's one
2 sentence. Can you just look at that sentence and let me
3 know when you've had a chance to look at it? Are you --
4 have you looked at it?

5 A. Yes.

6 Q. Thanks. We just need "yes" for the record. Do
7 you think it would have been helpful to have this
8 information when you were considering Senate Bill 14?

9 A. The information because it says it may not, is
10 not conclusive, and the answer would be no because it's
11 not conclusive data.

12 Q. Do you think it would have been helpful for
13 bill opponents to have access to this information during
14 consideration of Senate Bill 14?

15 A. You know, they -- they had the opportunity to
16 seek the information also, so I would not project
17 whether they would have liked to have had it.

18 Q. Do you think Texans had a right to this
19 information when Senate Bill 14 was being considered by
20 the Legislature?

21 A. It is not conclusive information, and we have
22 since found that this is bad -- not only nonconclusive,
23 it's bad information.

24 Q. So you think the public did not have a right to
25 have access to this information, is that your testimony?

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1 A. Public --

2 MS. HALPERN: Objection, argumentative.

3 Q. (By Ms. Westfall) You may answer.

4 A. The public should, you know -- they -- if it is
5 bad information, there's not a reason to feed bad or
6 questionable information to the public.

7 Q. And why -- what's the basis of your assertion
8 that this is bad information?

9 A. The conclusion is that they may not have, it is
10 not conclusive.

11 Q. Were you aware of any other information that
12 estimated the number of Texas voters who did not have a
13 record in the driver license database?

14 A. We went entirely, or not entirely, but we took
15 the information from prior studies that had been done of
16 the Baker -- the Baker -- the President?

17 MS. HALPERN: Carter.

18 A. Carter, Carter. Baker Carter Commission. The
19 study that's done by the Heritage Commission, which, you
20 know, they did a study of the states that had put this
21 into law, put the 24 states -- the Delaware study, and
22 the the University of Missouri study, all of those
23 studies showed that the percentage of people in like
24 states, the percentage was extremely high of people that
25 possessed driver's license. We had no reason to believe

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1 in Texas that that was not true.

2 Q. Okay. So is it your testimony that information
3 about voters in other states and their possession of
4 driver license information would be superior to any
5 information contained in Exhibit 33?

6 A. The number -- the information in -- in this
7 document says they -- it's inconclusive that it may not
8 and it is in no way conclusive.

9 Q. So the answer is yes, the information based on
10 the studies you just testified to in other states is --
11 is better?

12 A. You're answering my question for me. I stated
13 my answer is that I used the data from the four studies
14 from the data they had collected from actual elections,
15 and since 2004, prior to the passage of Senate Bill 14
16 in 2011.

17 Q. Are you aware of better, more accurate
18 information that was available in January 2011 than the
19 information -- about which voters lacked a Texas driver
20 license than what is available in what is set forth in
21 Exhibit 33?

22 A. No.

23 Q. Did Senator Davis --

24 THE WITNESS: I need a break.

25 MS. WESTFALL: Oh, sure, certainly.

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1 (Recess from 5:18 p.m. to 5:29 p.m.)

2 MS. WESTFALL: We're back on the record.

3 Q. (By Ms. Westfall) Senator, do you recall that
4 Senator Davis offered an amendment which would have
5 prohibited state agencies from charging a fee for
6 issuing documents used to obtain a photo ID like a birth
7 certificate?

8 A. Would you like to show me a copy of that
9 amendment?

10 Q. I'm just asking, sitting here today, do you
11 recall an amendment?

12 A. No.

13 Q. Are you aware that under Indiana's photo ID
14 law, indigent persons can obtain underlying documents to
15 obtain photo ID free of charge?

16 A. No.

17 Q. Do you recall that you moved to table Senator
18 Davis's amendment?

19 A. No.

20 Q. Do you recall that you objected to her
21 amendment on the record because it was not means tested?

22 A. No.

23 Q. Could Senate Bill 14 have been amended prior to
24 enactment to include a means tested provision?

25 A. Any -- any bill can be amended for any

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1 provision.

2 Q. There was nothing preventing that from
3 occurring, correct, procedurally?

4 A. Procedurally nothing, no.

5 Q. And would that change have made Senate Bill 14
6 resemble more closely the Indiana photo ID law?

7 A. I wouldn't have an opinion on that.

8 Q. Do you recall that Senator Davis also offered
9 an amendment which would have allowed the use of expired
10 IDs?

11 A. No.

12 Q. Are you aware that the Indiana and Georgia
13 photo ID laws permitted the use of expired IDs?

14 A. No.

15 Q. Do you recall that you moved to table Senator
16 Davis's amendment related to the use of expired IDs?

17 A. No.

18 Q. Do you recall that you supported an alternative
19 amendment offered by Senator Lucio that would have
20 permitted the use of ID expired from no more than 60
21 days?

22 A. I'm sorry?

23 Q. Do you recall that you supported an amendment
24 offered by Senator Lucio that would have allowed the use
25 of IDs expired no more than 60 days?

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1 A. I do believe that was an amendment that was
2 accepted.

3 Q. Do you recall that Senate Bill 14 as originally
4 filed did not allow the use of expired IDs at all?

5 A. I believe that is correct.

6 Q. And then it was amended to adopt Senator
7 Lucio's amendment permitting the use of IDs --

8 A. Which is a Democratic Hispanic Senator that we
9 took in the -- the mode of compromise.

10 Q. And that amendment was adopted, correct?

11 A. Yes, it was.

12 Q. Do you recall whether DPS had estimated that it
13 can take up to 40 days to receive a new ID once an order
14 for a new ID is placed?

15 A. No.

16 Q. Did you support the amendment for that reason?

17 A. That wasn't the reason I accepted it, no.

18 Q. Why did you support that amendment?

19 A. In the mode of compromise of a Democrat
20 Hispanic senator that asked me to take his amendment,
21 and I accepted it.

22 MS. WESTFALL: Could you mark this?

23 (Exhibit 34 marked for identification.)

24 Q. (By Ms. Westfall) You have been handed what's
25 been marked as Exhibit 34. It is a highly confidential

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1 document. I am unable to read the Bates numbers. It is
2 entitled "Senate" -- "SB 14 Amendment, Wroe Jackson,"
3 and it is a chart of amendments. It looks like it's
4 five or six pages long. Senator, have you seen this
5 document before?

6 A. No.

7 Q. Do you know who Wroe Jackson was working for at
8 the time of consideration of Senate Bill 14?

9 A. No.

10 Q. Was he working for Senator Huffman?

11 A. I have no idea. I don't know that name.

12 Q. Turning your attention to Page 2 of this
13 document, do you see it lists an amendment in the
14 center, three rows down, by Senator Lucio providing
15 voters a 60-day window following an ID's expiration, on
16 the second page of the document?

17 A. Yes.

18 Q. Do you see in the column following the
19 description of the amendment, it says it's "acceptable
20 to members because DPS estimates that it takes up to 45
21 days to receive a new ID"?

22 A. Yes.

23 Q. Did you support the amendment in part based on
24 this recommendation?

25 A. No.

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1 MS. HALPERN: Counsel, I need a
2 clarification. This witness hasn't seen this before.
3 You're representing that it was prepared by Wroe
4 Jackson?

5 MS. WESTFALL: Well, that's what the
6 document says.

7 MS. HALPERN: Okay.

8 MS. WESTFALL: I do not know the
9 custodian; but I have investigated the custodian, I do
10 not know the custodian.

11 MS. HALPERN: We also don't know whether
12 it's accurate then, right? I mean, I've seen this --
13 I've seen somewhere where things are wrong. Who
14 wrote -- I mean, can I voir dire the document? Who
15 wrote the summary? Who wrote the discussion points? Is
16 any of this supposed to be Senator Fraser's?

17 MS. WESTFALL: If you want to examine on
18 your own time. He doesn't recognize the document. I'm
19 not planning on asking him any --

20 MS. HALPERN: All right. Well, just --

21 MS. WESTFALL: -- questions.

22 MS. HALPERN: Then I would ask that you be
23 careful about suggesting what's in here is accurate.

24 MS. WESTFALL: Okay. You can put away
25 Exhibit 34 for the time-being.

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1 Q. (By Ms. Westfall) So is your testimony that
2 you supported Senator Lucio's amendment in the spirit of
3 compromise?

4 A. Yes.

5 Q. Is there any other reason you supported his
6 amendment?

7 A. Senator Lucio offered the amendment, and I
8 accepted it.

9 Q. Did Senator Davis, do you recall, offer an
10 amendment which would have allowed the use of IDs that
11 expired after the last general election, in other words,
12 up to two years?

13 A. I don't remember.

14 Q. Do you know whether the Indiana photo ID law
15 contains the same provision allowing the use of expired
16 IDs up to two years?

17 A. I do not.

18 Q. Did Senator Ellis offer an amendment which
19 would have permitted the use of unexpired student photo
20 IDs issued by public universities in Texas?

21 A. I'm not aware.

22 Q. Are you aware that Indiana's photo ID law
23 allows the use of expired student photo IDs?

24 A. No.

25 Q. Do you recall -- or I guess strike that.

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1 Prior to consideration of the amendments,
2 were you open at any time to allowing the use of student
3 photo ID and to amending Senate Bill 14 to allow the use
4 of student photo IDs?

5 A. Would you ask that question again?

6 Q. It was a bad question. I will withdraw that
7 question.

8 Prior to the consideration of the
9 amendments on the Floor related to Senate Bill 14 --

10 A. What year?

11 Q. 2011.

12 --- did you tell other bill supporters you
13 would defer to the will of the body on whether to allow
14 the use of student IDs?

15 A. Not to my knowledge.

16 Q. Did Senator Williams believe that student IDs
17 should not be included in Senate Bill 14?

18 MS. HALPERN: Objection, legislative
19 privilege.

20 A. You need to ask Senator Williams that.

21 Q. (By Ms. Westfall) Was it your impression that
22 Senator Williams opposed inclusion of student photo IDs
23 in Senate Bill 14?

24 A. To my knowledge, it was never discussed.

25 Q. Pardon?

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1 A. To my knowledge, it wasn't discussed.

2 Q. So you didn't know Senator Williams' position
3 one way --

4 A. I don't --

5 Q. -- or the other?

6 A. Did not know Senator Williams' position.

7 Q. Did Senator Davis also offer an amendment which
8 would have allowed the use of IDs with a photo issued by
9 the federal government or the State of Texas?

10 A. I'm not aware of that.

11 Q. Are you aware that Indiana and Georgia laws
12 permitted the use of federal ID and state ID with a
13 photo?

14 A. No.

15 Q. Did Senator Hinojosa offer an amendment which
16 would have allowed county commissioners to authorize
17 county election officials to issue voter registration
18 cards with a photo?

19 A. No.

20 Q. Do you recall that on the Senate Floor you
21 cited concerns about the expense of this amendment and
22 that it could be an implied mandate on the counties?

23 A. Are you referring to the last question you just
24 asked?

25 Q. Yes.

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1 A. The House amendment?

2 Q. The amendment related to county election
3 officials being able to create voter registration cards
4 with photos.

5 A. And would you repeat?

6 Q. Certainly. Do you recall that in response to
7 that amendment you cited concerns about the expense of
8 such an amendment and that it would create an implied
9 mandate on the counties to offer this services to
10 voters?

11 A. And I think, if you remember, it was the
12 potential expense.

13 Q. Do you recall your concerns?

14 A. Yes.

15 Q. Had any county election officials expressed
16 that concern to you?

17 A. County -- other county officials had not seen
18 it because the amendment was not brought forward in
19 enough time to contact.

20 Q. So the answer is no, you had not heard
21 concerns?

22 A. No.

23 Q. You also -- do you recall that you said on the
24 Senate Floor that a free card, quote, unquote, free card
25 from DPS was a superior option?

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1 A. Would you please repeat that?

2 Q. Do you recall that in response to Senator
3 Hinojosa's amendment concerning county election
4 officials being able to create their own photo ID
5 registration cards, that you said that the -- having
6 a card issued by DPS with no cost was a superior option?

7 A. Yes.

8 Q. Why did you think cards issued by DPS were a
9 superior option?

10 A. Because you had one central source, DPS, with a
11 secure card being issued rather than 250 different
12 possibilities of cards, and controlling it from one
13 source was a much better option.

14 Q. Did you think that providing photo IDs through
15 county election officials would enable voters to
16 register to vote and get their photo ID in sort of
17 one-stop shopping and that that would be desirable?

18 A. No.

19 Q. You didn't think voters would enjoy that
20 experience?

21 MS. HALPERN: Objection, argumentative.

22 Q. (By Ms. Westfall) You may answer.

23 A. We -- we weren't determining what was going to
24 be enjoyable for voters. We're trying to secure the
25 ballot box. And the most secure way of doing that is

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1 having a source, that was already in the business of
2 issuing picture IDs, do it rather than 254 counties that
3 had not done it before.

4 Q. Did you consider the needs of and experience of
5 the voters in any regard in enacting Senate Bill 14?

6 MS. HALPERN: Objection, argumentative.

7 Q. (By Ms. Westfall) You may answer.

8 A. Ask the question again.

9 Q. Did you consider the needs or experience of
10 voters in any respect of considering Senate Bill 14?

11 A. Of course.

12 Q. How?

13 A. That we were securing the integrity of the
14 ballot box so that they knew that their vote would be
15 correctly counted.

16 Q. Are you aware of any voter who did not vote in
17 an election due to concerns about ineligible voters
18 participating in elections?

19 A. No.

20 Q. Do you recall that Senator Gallegos offered an
21 amendment which would have required DPS to provide
22 extended hours and Saturday hours at DPS offices?

23 A. No.

24 Q. Do you recall that in response to that
25 amendment, you said this was not the place to debate DPS

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1 operations?

2 A. I believe during the debate of that amendment
3 that we had said we were going to ask DPS to explore the
4 potential of expanding both offices and operational
5 hours.

6 Q. And this was at the discretion of DPS; is that
7 correct?

8 A. It was instruction to the -- the -- DPS by the
9 Legislature.

10 Q. It was not within the Texas Senate Bill 14; is
11 that correct?

12 A. It was not included in the statute, yes.

13 Q. Why was it not appropriate to consider the
14 issue of extended and Saturday hours for DPS in the
15 Texas statute?

16 A. Normally in statutes, you do not micromanage an
17 agency. You give very broad authority to the agency and
18 instruction of what you'd like to them to do, and then
19 they explore implementing and also considering cost.

20 Q. Do you know whether in Senate Bill 14, DPS was
21 provided with any regulatory authority with regard to
22 the hours of operation?

23 A. The answer is no, there was no instruction to
24 DPS in the statute.

25 Q. If DPS subsequently cut back its hours of

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1 operation for driver licenses, wouldn't that have an
2 impact on the ability of Texans to access photo ID
3 necessary under Senate Bill 14?

4 A. It would subjective of me determining whether
5 it would or wouldn't. I wouldn't have an answer to
6 that.

7 MS. WESTFALL: Would you mark this?

8 (Exhibit 35 marked for identification.)

9 Q. (By Ms. Westfall) Senator, you've been handed
10 what's been marked as Exhibit 35. Do you recognize this
11 document?

12 A. No.

13 Q. This is a highly confidential document.
14 Testimony about this document will be under the
15 protective order as highly confidential. It's
16 TX00086577. Do you know whether Ms. McCoy drafted this?

17 A. I've never seen this document so I wouldn't
18 know.

19 Q. Do you recall that the House added an amendment
20 that would have provided for Voter ID identification
21 education targeted to low-income voters?

22 A. No.

23 Q. Do you recall that in the Senate, Senator
24 Duncan introduced an amendment that permitted voters who
25 cast a provisional ballot to return within six days, and

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1 if they attested to indigency, their ballot would be
2 counted without having to show an ID? Do you remember
3 that?

4 A. Would you repeat that?

5 Q. Certainly. It's a complicated provision, and
6 my question was complicated.

7 Do you recall that in the Senate, Senator
8 Duncan introduced an amendment that permitted voters who
9 did not have necessary photo ID, who then returned to
10 the election office and cast a provisional ballot, to
11 say that they were indigent and couldn't afford to get
12 an ID and their ballot would be counted? Do you
13 remember that amendment?

14 A. Yes.

15 Q. And do you recall that that amendment was
16 removed in the Conference Committee of Senate Bill 14?

17 A. Yes.

18 Q. Do you know why it was removed?

19 A. Yes.

20 Q. Why?

21 A. It was determined that there was no controls,
22 that basically anyone that wanted to declare that they
23 were either indigent or poor by -- they could just sign
24 something and say I'm indigent and could escape all of
25 the parameters of the bill, and there was no methodology

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1 to determine whether someone really was indigent or not.

2 Q. Do you see that it indicates on Exhibit 35, OAG
3 dislikes the Voter ID targeted at low-income voters?

4 A. I'm sorry, do it again, please.

5 Q. Do you see on Exhibit 35, it indicates, Section
6 5, Voter ID identification targeted at low-income voters
7 and that it indicates "OAG dislikes"? Do you see that
8 on the document?

9 A. Yes, I do.

10 Q. Do you know why the OAG disliked Voter ID
11 targeted at -- I mean, education targeted at low-income
12 voters?

13 MS. HALPERN: Objection, compound, assumes
14 facts not in evidence.

15 A. I don't know where this document came from. I
16 don't know who put it together. I don't know why they
17 would think that. So the answer is no, I have no idea
18 why.

19 Q. (By Ms. Westfall) Had you heard anything about
20 the OAG disliking this provision?

21 A. No.

22 Q. Had you heard anything about the OAG
23 disliking -- or liking the exception from not counting
24 provisional ballots for persons who signed an affidavit
25 indicating religious objection to being photographed?

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1 A. No.

2 Q. Okay. We can put down this document.

3 Did you chair the Conference Committee --

4 A. Yes.

5 Q. -- for Senate Bill 14?

6 A. Yes.

7 Q. During the Conference Committee's consideration
8 of Senate Bill 14, did you explain that the Committee
9 had created an election ID to be issued by DPS?

10 A. Could you please do it one more time?

11 Q. During the Conference Committee's consideration
12 of SB 14, did you explain that the Committee had created
13 a new election ID, an election identification
14 certificate to be issued by DPS?

15 A. The free -- free ID, the answer is yes.

16 Q. And it's referred to as the EIC. Did you refer
17 to it --

18 A. Yes.

19 Q. Okay. Do you recall that during the meeting of
20 the Conference Committee, you said that this change was
21 made from the original bill to including the EIC at the
22 request of the Texas Department of Transportation?

23 A. The Texas Department of Transportation is the
24 -- the Department of Public Safety is a branch of the
25 Texas Department of Transportation, so I don't know that

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1 I said TxDOT. I likely had said DPS, but they are one
2 and the same.

3 MS. HALPERN: Counsel, do you have a
4 document you can show? I'm not objecting, but you sat
5 here now for a half an hour asking him -- pulling
6 amendments out of the air and asking him if he remembers
7 this or that, without showing him anything, and we've
8 now been at this for six hours plus.

9 MS. WESTFALL: Well, Counsel, I have been
10 asking him questions based on his memory. I have a
11 good-faith basis for asking about these amendments. I
12 have documents. We could spend a lot of time. I could
13 seek further relief from the court so we can go through
14 these documents, but I'd like to avoid doing that.
15 That's why I'm trying to speed the process along. I am
16 asking questions about things on the public record. I
17 do not want to burden the Senator with paging through
18 hundred-page documents. I'm trying to save time and
19 avoid conflict.

20 MS. HALPERN: Well, and that's fine, and
21 you're going both, but you're also getting a lot of "I
22 don't remembers," and I don't want that to be a
23 reflection on this witness that he does not remember one
24 of 40-something amendments --

25 MS. WESTFALL: Well --

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1 MS. HALPERN: -- when you haven't put it
2 in front of him.

3 MS. WESTFALL: -- if you gave me another
4 half an hour, I will examine him on the document. I
5 will do that. Would that be your preference, because I
6 can do that? If I have time.

7 MS. HALPERN: Well, that should have been
8 built into your cross, so on you go.

9 A. You have determined this was five years ago, as
10 I said. If you'd like to -- you know, you're asking me
11 questions on something that we haven't looked at in five
12 years.

13 MS. WESTFALL: I understand. I'm trying
14 to get through the questions and ask him what he knows
15 sitting here today.

16 MS. HALPERN: Actually, I want to talk to
17 him for a few minutes. We're just going to step out in
18 the hall.

19 MS. WESTFALL: Sure.

20 (Exhibit 36 marked for identification.)

21 (Recess from 5:51 to 5:57 p.m.)

22 MS. WESTFALL: Let's go back on the
23 record.

24 THE WITNESS: Could I --

25 MS. WESTFALL: Let me just -- let me find

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1 my --

2 MS. HALPERN: He has something -- if we're
3 going back on the record, he has something he wants to
4 say.

5 Q. (By Ms. Westfall) No, that's okay. I just need
6 to get organized. I know I have 8 minutes. I don't
7 want anyone to get mad.

8 A. I'd like to make a correction to the last
9 response that I made.

10 Q. Okay.

11 A. The question was asked about TxDOT and DPS and
12 they -- to describe the relationship in Texas of the
13 two. We have a dedicated gas tax that is collected on
14 every gallon of gas sold in Texas that funds TxDOT. A
15 portion of that money then is used to fund DPS.

16 Q. Uh-huh.

17 A. Whenever we were asking DPS to furnish a free
18 identity card, TxDOT was not in favor of that because it
19 would have affected money coming from the dedicated gas
20 tax and would have kept it from building roads. So we
21 did a separate appropriation and created a new entity,
22 which would be the EIC -- I think is the card name --
23 and we did a separate appropriation to that and created
24 the new card that would be separate from the driver's
25 license because the driver license was dedicated from

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1 the fund from TxDOT. So that's the relationship of the
2 two, of DPS and why TxDOT had an interest in the EIC
3 card.

4 Q. Thank you.

5 Senator, do you know what the term
6 "majority-minority" state means?

7 A. I believe a majority-minority state would be a
8 state with more than 50 percent what would be considered
9 minority voters.

10 Q. Is Texas a majority-minority state?

11 A. We're nearing majority-majority --- minority-
12 majority.

13 Q. Do you know when that is projected to occur?

14 A. No, I do not.

15 Q. Is it your understanding that African-American
16 voters in Texas disproportionately support Democrat
17 candidates?

18 A. I do not know that.

19 Q. In Texas are African-Americans more likely to
20 live in poverty than White's?

21 A. I do not know that.

22 Q. In Texas are Hispanics more likely to live in
23 poverty than White's?

24 A. I do not know that.

25 Q. I want to go off the record for one second.

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1 (Recess from 5:59 p.m. to 6:01 p.m.)

2 Q. (By Ms. Westfall) Can you turn your attention
3 back to what's been previously marked as Exhibit 6. Can
4 you turn your attention to the third page of that
5 document.

6 A. Okay. Can we clarify here, this is -- one is
7 the document -- what I believe to be a document. The
8 second one is a correction of the document, and it is --
9 it is the same document. And I -- which one was
10 actually released, I have no way of knowing. But one
11 was the beginning document and the other one was a
12 correction, and I don't know that this was actually ever
13 released.

14 Q. I see. Turning your attention to Texas
15 00009751 of that highly confidential document --

16 A. Yes.

17 Q. -- do you see six paragraphs down, there's a
18 paragraph that starts, "It is not possible for every
19 election judge to personally know..."?

20 A. Yes.

21 Q. Do you see it says, "It is not possible for
22 every election judge to personally know every voter on
23 the registration list especially in large urban
24 counties"? Do you see that sentence?

25 A. Yes.

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1 Q. Do you know why this refers to problems in
2 large urban counties?

3 A. Do we know when this was -- the date on this,
4 when it was released?

5 Q. Well, I'm just asking you based on your --

6 A. I'm trying to give you an answer based on when
7 this was released.

8 Q. Certainly. Turning to the following page, do
9 you see that it refers in a couple of paragraphs down,
10 to the Senate Bill 362?

11 A. I believe the reference there was made in the
12 testimony on 362 that in Houston, there was an election
13 judge that had had a lady with a big hat with fruit on
14 the top of it, brightly colored, voted, left, went to
15 her car, came back in, in 15 minutes, came back and
16 voted. The exact same woman voted again. There was a
17 -- the person -- the election person went to the
18 election judge running the voting and made them aware
19 that the woman was voting for the second time and they
20 were made aware, "Well, we don't have the ability stop
21 her from voting. We don't have the tools to stop her."
22 So, that probably is a reference to a large urban
23 county, i.e., Houston, where that actually happened.

24 Q. Do you know the race of that voter by chance?

25 A. I believe it was an Anglo.

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1 MS. WESTFALL: Could you mark this --

2 A. I -- let me retract that. I have no way to
3 know that. There's no reason I would know what the
4 ethnicity of that person.

5 Q. Thank you.

6 MS. WESTFALL: Could you mark this.

7 (Exhibit 37 marked for identification.)

8 MS. WESTFALL: Can we go off the record.

9 (Brief discussion off record.)

10 Q. (By Ms. Westfall) You have been handed what's
11 been marked as Exhibit 37. Senator, have you seen this
12 document before that's been marked -- produced in this
13 litigation as highly confidential, TX 00021227
14 through --

15 A. Is this the University of Texas poll that was
16 done in 2009 and released in 2010?

17 Q. Well, looking at the date on this document, do
18 you see that it was circulated by Bryan Hebert on
19 January 24, 2011?

20 A. I'm still asking questions about this --

21 Q. Well --

22 A. -- if you don't mind, if you'll -- you asked me
23 do I recognize this. It's making reference to a poll in
24 2008, and then there was a second poll done later. Is
25 this in reference to the University of Texas poll done

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1 later?

2 Q. Well, I'm here to ask questions of you and you
3 can testify as to what --

4 A. You asked me if I recognize this document.

5 Q. Yes.

6 A. I'm trying to clarify what the document is.

7 Q. Okay. Well, I -- I can ask questions during
8 this deposition, you're -- or I'm asking questions,
9 you're answering them, so I can't answer that question.

10 Based on your review of Exhibit 37, what
11 do you believe it to be?

12 A. The subject says University of Texas Polling
13 Data on Voter ID, and it was released on January 24,
14 2011, so I'm assuming it was the second Texas poll that
15 came out. There was one in 2008 and one in late 2010
16 that was released in January of 2011. Is that the --
17 yes.

18 Q. And so that's what you believe this to be,
19 Exhibit 37?

20 A. I believe that to be, yes.

21 Q. Do you see that it indicates at the top of the
22 page, at the first page, that respondents were asked
23 about, "Some people argue that requiring registered
24 voters to present government issued photo ID reduces
25 voter fraud?"

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1 A. Yes.

2 Q. Do you see that sentence?

3 Does Senate Bill 14 allow voters to allow
4 any form of government issued photo ID?

5 MR. HALPERN: Objection, compound.

6 Q. (By Ms. Westfall) You may answer.

7 A. A -- the answer is yes. Because a passport is
8 a government issued ID, a military ID is a government ID
9 and the citizenship is a government ID, so yes, we do
10 allow it.

11 Q. Does Senate Bill 14 allow voters to present any
12 form of government issued photo ID?

13 A. The answer is yes because that is a type of ID.

14 Q. But Senator, there are many forms of ID that
15 are issued by the government that you testified about
16 today that were not included in Senate Bill 14; isn't
17 that right?

18 A. But that's not the question you asked me. You
19 said does it -- are they -- are "any" allowed, and "any"
20 would include passports -- passports, you know, the
21 citizenship papers, the -- you know, the three that I've
22 mentioned.

23 Q. This poll asked voters about a requirement that
24 voters present government issued photo ID, right?

25 A. No. The -- this poll actually asked the

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1 question, "Would you be in favor of a photo ID," an
2 absolute photo ID, and if you'll see at the bottom, the
3 results of this were exactly -- almost exactly the same
4 at July 2008. The results were exactly the same in
5 2010, it was asked, that showed that over 65 percent of
6 African-Americans said "Yes, we would be in favor of a
7 photo ID," and then 70 percent of Hispanics said, "Yes,
8 we're in favor of it." Those results were almost
9 exactly the same as they found two years earlier. And
10 this is one of the documents that I referred to with the
11 Democrats saying, "How can you be against this, that you
12 have 70 percent of Hispanics that are in favor of a
13 photo ID?"

14 MS. WESTFALL: Okay. I'm going to object
15 as nonresponsive and a narrative response. I'm going to
16 move to strike your response.

17 Q. (By Ms. Westfall) Looking at the paragraph as
18 to what respondents were asked, does this describe
19 accurately the provisions of Senate Bill 14?

20 A. The question that were asked on the poll is
21 would they be in favor of a strict photo ID.

22 Q. And therefore, do you believe that this
23 question, asked the voters, accurately represents the
24 provisions of Senate Bill 14?

25 A. The -- question that we're asking is were

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1 people in favor of a strict photo ID.

2 MS. WESTFALL: I would object as
3 nonresponsive.

4 Q. (By Ms. Westfall) Does this poll ask about the
5 provisions of Senate Bill 14?

6 MR. HALPERN: Counsel, let me enter an
7 objection for the record because you don't have the poll
8 question. You have somebody's representation of what
9 the poll question was. So he's answered your question.

10 Q. (By Ms. Westfall) I'm asking about --

11 MR. HALPERN: He's telling you he thinks
12 it was a difference poll question.

13 A. And if you'll allow me to answer, you are
14 incorrect. I do know what the poll question was, and
15 the question was, "Would you be in favor of a strict
16 photo ID to vote," and respondents answered, 70 percent
17 of Hispanics said yes. And that is not a nonresponsive
18 answer, that is a correct answer based on the poll,
19 because this was a poll that was conducted based by the
20 University of Texas in late -- in late December of 2010
21 and it matched the results of the poll they did in 2008.

22 Q. (By Ms. Westfall) Do you know whether this poll
23 was conducted by Darren Shaw?

24 A. I do not know.

25 Q. Do you know that Darren Shaw testified as an

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1 expert on behalf of the State of Texas in the litigation
2 Texas versus Holder concerning Senate Bill 14?

3 A. Do you know -- no, I do not know Darren Shaw
4 and I do not know that.

5 Q. Do you know that his testimony was disregarded
6 by the three judge panel in that case?

7 A. No.

8 MS. HALPERN: Objection, relevance.

9 Q. (By Ms. Westfall) Does strict photo ID, as you
10 state in this poll asked, mean only the photo IDs
11 permitted by Senate Bill 14?

12 A. The answer obviously is no because the Senate
13 Bill 14 had not been passed at this time. This was an
14 independent poll that was taken prior to the legislative
15 session and probably prior to Senate Bill 14 being
16 enacted and had nothing to do with the legislation
17 coming forward. It was a question asked independently
18 by a bipartisan group at the University of Texas as they
19 had done in 2008, and they asked the question, would --
20 do you believe that voters should be able to -- or
21 required to show a photo ID before voting? That was the
22 question that was asked. 70 percent Hispanics and 65 of
23 African-Americans said yes.

24 MS. WESTFALL: As they say in Texas, I
25 will pass the witness to Mr. Derfner.

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1 MS. HALPERN: How much time has
2 Mr. Derfner got? Time out, we're going to do a time
3 check.

4 (Brief discussion off the record.)

5 THE COURT REPORTER: 24 minutes.

6 MS. HALPERN: You have 24 minutes.

7 MS. WESTFALL: Armand?

8 MR. SCOTT: Is he's still on the phone?

9 MS. WESTFALL: I hope so. Hey, Armand.

10 MR. SCOTT: Are you muted, Armand? You
11 don't have any questions?

12 MR. DERFNER: Can you hear me now?

13 MS. HALPERN: Yes, yes.

14 MR. DERFNER: My problem is the mute has
15 no light on it so I can't tell if it's on or off.

16 Okay, are we ready?

17 MS. HALPERN: We are.

18 EXAMINATION

19 BY MR. DERFNER:

20 Q. Senator Fraser, my name is Armand Derfner, I'm
21 a lawyer for some of the plaintiffs, the D.C. LULAC
22 plaintiffs.

23 A. Hello, Armand.

24 Q. And I'm here to ask you a few questions. My
25 first question is: When you talked earlier about the

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1 House, the agency takes -- makes its rules and
2 regulations and you give them a fair amount of leeway;
3 is that correct?

4 A. I referred to it as broad powers.

5 Q. Okay. When you -- when SB 14 was passed, was
6 the intention to give DPS -- with respect to the EIC,
7 the Election Identification Certificate, was the
8 intention to give DPS some good guidance or give them
9 very broad open-ended discretion?

10 A. We gave them very clear instructions of the
11 direction that we wanted them to go under the broad
12 powers that had been given them under the Legislature,
13 and also by the appropriations process, gave them a
14 revenue stream in order to develop the EIC card.

15 Q. And in terms of what they should require an EIC
16 applicant to present, did you give them guidance or
17 leave them pretty much open ended?

18 A. They are in the business, because of driver's
19 license, of interpreting that and that we gave them the
20 jurisdiction to do it and instructions and -- but we
21 gave them broad authority to issue this.

22 Q. Okay. Would -- can we find the exhibit which
23 is SB 14, and I'd like you to take a look at that and
24 look particularly near the end in Chapter 20?

25 MR. SCOTT: 13.

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1 MR. SHORDT: Armand, we have two versions,
2 a as-is produced and a final signed version.

3 MR. DERFNER: Final.

4 MR. SHORDT: That's Exhibit 16.

5 A. What page?

6 Q. (By Mr. Derfner) It's near the end in Chapter
7 20.

8 A. Well, there's not chapters.

9 Q. Sorry.

10 MS. FARANSSO: Should be Section 20.

11 Q. (By Mr. Derfner) Okay. It's -- I'm sorry,
12 Section 20, which creates Chapter 521 A of the
13 Transportation Code.

14 A. I've got it.

15 Q. Okay. If you look at Subsection F, do you see
16 there, it says the department may require each applicant
17 to provide the information required by Section 521.142?

18 A. Okay.

19 Q. Do you see that?

20 A. Yes.

21 Q. Okay.

22 MR. DERFNER: Tania, could you give the
23 Senator Section 521.142, and let's mark that as an
24 exhibit.

25 MS. HALPERN: What number?

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1 THE COURT REPORTER: 38.

2 (Exhibit 38 marked for identification.)

3 MR. SCOTT: What number are we on?

4 THE COURT REPORTER: 38.

5 MS. HALPERN: 38.

6 Q. (By Mr. Derfner) Senator, do you have that?

7 A. I have it in front of me.

8 Q. Okay. And if you will look, you'd see that it
9 lists some things that the applicant is supposed to do.
10 Look down at Subsection E, would you please?

11 A. If you'll allow me, I'm going to read the whole
12 thing as we're moving forward, if you'll give me a
13 little time.

14 Q. Okay. Just Subsection E.

15 A. But I'm reading the whole thing.

16 Q. No, not the whole thing.

17 A. But E ties to the whole thing, so I'm going to
18 read the whole thing.

19 Okay, I'm to E.

20 Q. Okay. Read E out loud, please.

21 A. "The application must include other information
22 the department requires to determine the applicant's
23 identity, residency, competency and eligibility as
24 required by the department or state law."

25 Q. Actually, it says, "Must include any other

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1 information," doesn't it?

2 A. "Any other information."

3 Q. You read, "must include other information,"
4 but it says, "any other information," right?

5 A. Okay.

6 Q. Okay.

7 MR. DERFNER: Tania, would you give the
8 Senator the Regulation Section 15.183, and mark that as
9 an exhibit, please.

10 (Exhibit 39 marked for identification.)

11 MS. FARANSSO: It's been marked as Exhibit
12 39.

13 Q. (By Mr. Derfner) Tell me when you have that,
14 Senator.

15 A. I have it.

16 Q. Okay. If turn to the second -- oh, do you
17 recognize this as some of regulations that DPS issued
18 relating to the EIC?

19 A. No.

20 Q. Okay. Would you take a look at it and just see
21 if that's what it seems like?

22 A. Do you represent that that's what it is?

23 Q. I do. I do.

24 A. Okay.

25 Q. If you look at -- on the front page, it says --

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1 the last line is Subchapter L, Election Identification
2 Certificate.

3 A. Okay. I don't see Subchapter L. Got it. Got
4 it.

5 Q. Turn to the second page and look at Subsection
6 3. Read that to me.

7 A. "The fingerprints of the applicant, this does
8 not apply to an applicant who is permitted and utilizes
9 an alternative method for renewing or duplicating an
10 election identification certificate."

11 Q. Were you aware that the Department of Public
12 Safety had issued regulations requiring applicants for
13 an EIC to give their fingerprints to the DPS in order to
14 get an EIC?

15 A. No.

16 Q. Is that -- was SB 14 intended to give that kind
17 of or that degree of discretion to DPS?

18 A. We gave broad authority under rule to DPS to
19 develop the EIC.

20 Q. So if DPS says they want an applicant for an
21 EIC to issue -- to give them their fingerprints, is that
22 in keeping with SB 14?

23 A. We gave broad authority to DPS to develop
24 guidelines.

25 Q. Do you, as a legislator, think it's sound

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1 policy to make a -- somebody who wants to get a document
2 for voting give his fingerprints in order to get that
3 document?

4 A. I would not be able to answer that question
5 without the rationale from DPS of the reasoning for
6 what -- their Number 3.

7 Q. If DPS had come to you and said, "We want these
8 people's fingerprints," what would you have said?

9 MS. HALPERN: Objection, calls for
10 speculation.

11 A. You're asking me to speculate --

12 Q. (By Mr. Derfner) Right. Go ahead and
13 speculate.

14 A. -- on something that didn't happen. I'm sorry,
15 I don't speculate during this deposition.

16 Q. You -- well, okay. If -- if Senator Patrick in
17 his deposition said he thought it was perfectly okay for
18 them to demand fingerprints, would you agree with that?

19 A. I would say that Senator Patrick's entitled to
20 his opinion if he said that.

21 Q. Okay. Okay. If DPS -- what rationale could
22 there be to justify asking for fingerprints from a voter
23 applicant?

24 A. Speculative. I wouldn't speculate what it is
25 until DPS gave me their rationale of why they asked for

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1 it.

2 Q. Okay. If I were to represent to you that DPS's
3 witness has said that's what they do for driver license
4 applicants and therefore they did the same for the EIC
5 applicants, what would your reaction be?

6 A. I would say they have the authority to develop
7 the guidelines for both driver's license and EIC, and we
8 gave them authority to develop those guidelines.

9 Q. And why did you give that authority to DPS --

10 A. You're using --

11 Q. -- in the case of the EIC?

12 A. You're using why did "you," you're implying
13 that I gave the --

14 Q. Why was that done in SB 14?

15 A. You're speculating.

16 I'd have to speculate when that authority
17 was given. Probably years before I came into the
18 Legislature, and I would not speculate on that.

19 Q. Is there a valid reason for giving DPS the
20 authority over the EIC?

21 A. I gave the response to that about four or five
22 or ten questions ago, explaining why we gave the
23 authority to DPS. That authority was given because they
24 have the driver's license, they have the expertise to
25 issue it, and we asked them to develop that same

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1 guidelines for EIC.

2 Q. Well, if the EIC is supposed to represent or be
3 based on policies relating to security, as in issuance
4 of a secure document, but also protecting the interest
5 of the voter who wants to vote, how did you -- how does
6 SB 14 reflect the latter interest, that is the interest
7 of the voter, wanting to vote?

8 A. Senate Bill 14 assigned the authority to
9 develop the guidelines to the Department of
10 Transportation -- I'm sorry, to the Department of Public
11 Safety because they are -- the primary form of
12 identification is a driver's license, they have security
13 measures that they implement into the driver's license,
14 and we asked them to develop one for EIC because that
15 was the type of security we were looking for on this
16 photo ID.

17 Q. Do you think that the rights of a person to
18 drive are identical to the rights of a person to vote?

19 A. Obviously not.

20 Q. In what way?

21 A. A person driving a car, you give a license --
22 you test them to see their ability to drive a car. The
23 identification that we're issuing for the voter is
24 solely to represent that they are who they say they are
25 whenever they show up at the poll.

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1 Q. That wasn't my question, I think. Let me ask
2 the question again. Are the rights of a person seeking
3 to vote any different from the rights of a person
4 seeking to drive?

5 A. I'm not sure I understand the question you're
6 asking. That -- obviously, someone that is asking for a
7 driver's license is asking for the rights to drive the
8 vehicle. The identification for voting is trying to
9 identify that they are who they say they are.

10 Q. Are there constitutional rights involved in
11 either the right to drive or the right to vote?

12 A. I don't believe there's a constitutional right
13 to drive.

14 Q. What about the right to vote?

15 A. The -- there's a constitutional right for the
16 ability to vote.

17 Q. Okay. Well then, does -- how is that
18 constitutional right protected if you impose the same
19 requirements for a voter as you do for a driver?

20 MR. HALPERN: Objection, misstates the
21 testimony, assumes facts not in evidence.

22 Q. (By Mr. Derfner) Okay. Would it be -- if an
23 agency were to treat a voter in the same way as -- a
24 voting applicant in the same way it treats a driving
25 applicant, would that be protecting the constitutional

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1 rights of the voter?

2 MS. HALPERN: Objection, calls for a legal
3 conclusion. This witness is not an expert witness.

4 Q. (By Mr. Derfner) Fine. Can you answer the
5 question, Senator?

6 A. I'm not an expert witness.

7 Q. I know you're not an expert witness. What is
8 your belief?

9 A. That would be based on speculation that -- I'm
10 not an expert witness in this area.

11 Q. Okay. Did you take any -- when you were
12 participating in the legislative consideration of SB 14,
13 did you take into consideration any different -- any
14 constitutional difference between the rights of drivers
15 and the rights of voters?

16 A. I'm not sure that issue was ever raised by
17 anyone in the debate.

18 Q. Okay. Did you consider it?

19 A. I can't say that I considered it because it was
20 not raised as an issue by anyone in the debate.

21 Q. Okay. Do you know if -- do you know if anybody
22 else considered it?

23 A. I just said that I don't know that anyone
24 raised this as an issue.

25 Q. Okay. I believe you -- I believe you said

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1 earlier on that there's been some other legislation
2 after SB 14 that dealt with, as I recall, citizens or
3 other people and qualifications to vote; is that
4 correct?

5 A. No.

6 Q. I'm sorry, what?

7 A. The answer is no.

8 Q. Okay. Do you remember SB 1, the Budget Bill,
9 that came after SB 14?

10 A. You're going have to be more specific. Every
11 Budget Bill in every session is SB 1.

12 Q. Okay. In 2011, the Budget Bill, SB 1, was not
13 passed in the regular session, it was passed in a
14 special session in July, and as part of that budget
15 bill, there was a provision, as I recall, this Chapter
16 72, that was added by Senator Williams in the process
17 which dealt with the driver's license and basically,
18 among other things, required applicants for new or
19 renewal licenses to present documentary proof of
20 citizenship. Do you remember that?

21 A. No.

22 Q. Were you involved in that at all?

23 A. No.

24 Q. Are you aware that the requirements for
25 driver's license applicants have been increased since

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1 the time you passed -- since the time that SB 14 was
2 passed?

3 A. No.

4 Q. Okay. I think I have just one more question.

5 Did you at any point in 2011 say to
6 Senator Ellis that the reason you were carrying SB 14,
7 or the Voter ID bill, was because you "drew the short
8 straw"?

9 A. No.

10 Q. Okay.

11 MR. DERFNER: I have no more questions.

12 Thank you.

13 MR. SCOTT: How much time?

14 MS. HALPERN: Well, they're done.

15 MR. SCOTT: Well, I was just going to see
16 if they left me any.

17 MS. HALPERN: Well, you're -- it's by
18 party, by who is above and below the V.

19 MR. SCOTT: Oh, okay.

20 MS. HALPERN: You're below the V.

21 MR. SCOTT: Okay. Well, then how much
22 time do they have left?

23 MS. HALPERN: How much time do they have
24 left, around 10 minutes?

25 THE COURT REPORTER: Just a second.

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1 MS. WESTFALL: We may need to retain some.
2 (Brief discussion off the record.)

3 THE COURT REPORTER: About five minutes
4 left.

5 MS. HALPERN: Mr. Scott, you have
6 questions?

7 MR. SCOTT: I have a couple.

8 MR. HALPERN: Where would you like to sit,
9 if you're going hand him anything.

10 MR. SCOTT: I'm so loud mouthed, let me
11 talk from over here.

12 MR. HALPERN: Are you going to hand him
13 documents?

14 MR. SCOTT: No, but I'm going to get you
15 to pull some for him, if you don't mind.

16 MR. HALPERN: Okay.

17 MR. SCOTT: How about Exhibit 20.

18 EXAMINATION

19 BY MR. SCOTT:

20 Q. Senator Fraser, my name is John Scott and I'm
21 one of the lawyers who represents the Texas defendants
22 in this lawsuit. If for any reason you need to visit
23 with your counsel, let me know and we'll stop as many
24 times as necessary during this portion of your
25 deposition.

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1 If you would, please, turn to Exhibit 20
2 to Page 118 of that document, specifically Floor
3 Amendment Number 12.

4 A. 118?

5 MR. CLAY: That's the wrong one. That's
6 it up on top there, Senator.

7 A. Okay. What page?

8 Q. (By Mr. Scott) It's Page 118, Senator.

9 A. Okay.

10 Q. Floor Amendment Number 12.

11 A. I'm there.

12 Q. Who proposed that amendment Number 12?

13 A. Appears Senator Davis.

14 Q. Was there ever a cost estimate given on how
15 much money would it cost the State of Texas to implement
16 Floor Amendment Number 12?

17 A. Not only was not a estimate of that, which is
18 required on an amendments, but the general rule in the
19 Senate and the rule that we placed on this bill was that
20 all amendments had to be given to the author of the bill
21 24 hours in advance. One of the purposes of doing that
22 is so we get a fiscal note on any amendments to
23 determine what the cost would be to the State if the
24 amendment's put in. Of the amendments offered --
25 basically, all the amendments that were offered by the

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1 Democrats, usually -- I had about five minutes to look
2 at it. This is one of the ones that was offered at the
3 last minute, she stuck the amendment in, we had no
4 chance to look at it and we had no way to determine by
5 fiscal note what the impact of the budget to the State
6 would be, which is -- was fairly typical of the
7 amendments that were offered.

8 Q. Did any state agency raise concerns to you
9 regarding Floor Amendment Number 12?

10 A. Yes. There -- because there had not a been
11 fiscal note done on this, not knowing the impact of it,
12 this actually could have impacted several places in the
13 budget.

14 Q. Get you turn over to Floor Amendment Number
15 16. Who is the sponsor of Floor Amendment Number 16?

16 A. It appears to be Senator Van de Putte.

17 Q. And was this amendment provided to you pursuant
18 to Senate rules?

19 A. No.

20 Q. What -- where -- what failures in Senate rule
21 were done as a result of Floor Amendment 16, that you
22 recall as you sit here today?

23 A. Again, 16 was a gutting amendment that would
24 totally change the bill back to the status of 362, and
25 that I was not given any notice prior to and it was

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1 dropped in at the last minute and this particular
2 amendment, I think I had probably 5 to 7 minutes to see
3 the amendment.

4 Q. And what would have been the effect on SB 14 of
5 Floor Amendment Number 16?

6 A. The -- the question you're asking cannot be
7 determined because we didn't have time to evaluate
8 it. If we had had the 24 hours notice to allow agencies
9 to evaluate, come back with a fiscal note and more
10 especially the impact on the agencies and the budget, it
11 would have given us a fair way of determining that. But
12 because Senator Van de Putte did not allow or didn't
13 keep with the Senate rules and turned this in with very
14 short notice, we were not able to evaluate this
15 amendment.

16 Q. As we sit here today, we can look at this
17 amendment, Floor Amendment 16, and determine a couple of
18 things at least based upon what the written word is.
19 One of which would be, under Section 6, so Floor
20 Amendment Number 16, Subpart 6, does it allow for the
21 issuance of a valid identification card -- I'm sorry.
22 Does it allow for a person to vote if they simply
23 produce a utility bill, a bank statement, government
24 check, paycheck or any other government document that
25 shows the name of a -- and address of a voter?

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1 A. Yes.

2 Q. And does this bill also allow for -- does it
3 allow for a way to stop anyone who's not 18 -- strike
4 that.

5 Does -- would Floor Amendment Number 16
6 have prevented or -- strike that.

7 Would Floor Amendment Number 16 have
8 allowed for someone who is less than 18 to acquire
9 identification were they of the mind to vote illegally?

10 A. Because of the technology today and the ability
11 for someone to get a photo ID at virtually multiple
12 places in town, like Kinko's, it would be totally
13 impossible to determine, if a person with the ID card,
14 where they got it and were they a valid, eligible voter.

15 Q. And with regard to Floor Amendment Number 16,
16 would this have prevented a non U.S. citizen from being
17 able to vote?

18 A. Not likely.

19 Q. And with regard to non U.S. citizens, as the
20 bill sponsor of SB 14, were you aware of a potential
21 issue relating to non U.S. citizens who were registered
22 to vote in the state of Texas?

23 MS. WESTFALL: Objection --

24 Q. (By Mr. Scott) Prior to the passage --

25 MS. WESTFALL: Asked and answered.

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1 Q. (By Mr. Scott) -- of SB 14?

2 MS. WESTFALL: Objection, asked and
3 answered.

4 Q. (By Mr. Scott) You may answer.

5 A. Would you repeat the question?

6 Q. Sure. Prior to the passage of SB 14, were you
7 aware of allegations that's non U.S. citizens were
8 registered to vote in the state of Texas?

9 A. Those allegations had been made by numerous
10 newspapers across the state, and those allegations were
11 made during testimony in 2007, 2009, 2011, so yes, the
12 allegations had been made by, both in testimony and by
13 numerous news sources through that period.

14 Q. Did you believe prior to passage of SB 14, that
15 non U.S. citizens had in fact registered to vote in the
16 state of Texas?

17 A. Based on the newspaper stories and the
18 testimony of people, I had a great concern that the
19 State of Texas did not have the tools to interpret
20 whether someone had. And so there was a concern that
21 people that were not entitled to vote potentially were
22 voting.

23 MS. FARANSSO: May I say for one minute --

24 MR. SCOTT: Yeah.

25 MS. FARANSSO: -- I just want the record

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1 to reflect that when Senator Fraser and I looked at
2 Exhibit 20 earlier today, he refused to answer some
3 questions specifically with regard to this document
4 because it did not reflect the full record of the
5 amendment. To the extent you continue to ask him
6 questions about the amendment, based on this document, I
7 just want the record to reflect that.

8 MR. HALPERN: On the record, you don't
9 reflect that he ultimately did answer your question --

10 MR. SCOTT: Objection, side bar.

11 MS. HALPERN: -- based on the wording in
12 the document.

13 MR. SCOTT: Okay.

14 MS. WESTFALL: Objection as well.

15 Q. (By Mr. Scott) Senator, I'm going to hand you
16 what's already been marked as Exhibit 21 to your
17 deposition. That's a voter registration form, correct
18 -- application?

19 A. I believe this is represented as a Texas Voter
20 Registration Application.

21 Q. And is -- does the application require the
22 applicant to self identify whether they're a U.S.
23 citizen or not?

24 MS. WESTFALL: Objection, asked and
25 answered.

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1 A. The question on the application says, "Are you
2 a citizen of the United States?" The applicant is only
3 required to check either yes or no.

4 Q. (By Mr. Scott) And do you believe that the
5 passage of SB 14 -- or did you believe prior to the
6 passage of SB 14 that the passage of SB 14 and the
7 requirement of a photo ID being presented at the time a
8 voter casts his ballot in person would help with voter
9 integrity in the state of Texas?

10 A. The answer is yes, that we believed at the time
11 of the passage that -- and today, that will help with
12 the integrity of the ballot. We also believe that
13 because of provisions with the DPS, the requirements
14 they were having, that would help us identify whether
15 someone was actually qualified to vote.

16 Q. Senator, let's switch back over to Exhibit 20
17 and now let's turn to Floor Amendment 19.

18 A. I've got it.

19 Q. And who proposed Floor Amendment 19?

20 A. It appears it's Senator Ellis.

21 Q. And was this -- when was this Floor Amendment
22 19 presented to you for the first time?

23 A. I had, you know, 5 to 10 minutes before the
24 amendment was offered for me to look at the amendment.

25 Q. Would that -- was that in a compliance with

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1 Senate rules?

2 A. No.

3 Q. And one of the things -- what was the purpose
4 of Floor Amendment 19?

5 A. I don't have the full amendment, but the Cliff
6 Notes that are here appears it was addressing a person
7 who's in -- a student who was in an accredited public
8 university a student ID card.

9 Q. Can you be a non-citizen and go to a Texas
10 university?

11 A. Yes.

12 Q. Would this -- would the passage of this
13 amendment have allowed a non-citizen of the state of
14 Texas or the United States to be able to present
15 identification and vote in the state of Texas where they
16 have a mind to do so?

17 A. There would have been no tool or ability of the
18 election official to determine if that person was a
19 citizen of the United States.

20 Q. Let me turn back to the history of Voter ID.
21 In 2007 -- I think you testified about this earlier,
22 back in 2007, was there a vote to suspend the rules?

23 MS. WESTFALL: Objection, asked and
24 answered.

25 A. In 2007, I was recognized for a motion to

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1 suspend the regular order of business to take up and
2 consider House Bill 218.

3 Q. (By Mr. Scott) And why was that? Take me
4 through that. I mean, take me through what the process
5 was, why that happened.

6 MS. WESTFALL: Objection, calls for a
7 narrative response.

8 Q. (By Mr. Scott) Go ahead and answer.

9 A. The operations of the Senate, that you have to
10 take up bills in the regular order business are
11 the order that they were received by the Senate. In
12 order to bring my bill up and to get it out of the
13 regular order of business, you had to suspend the
14 regular order of business and have a vote of two-thirds
15 of the members present.

16 Q. And is that the reason the bill died?

17 A. No.

18 Q. Why did it die?

19 A. The bill as voted on, of the members present
20 when the vote was taken, that the vote passed.

21 Q. And then what happened to the bill?

22 MS. WESTFALL: Objection, asked and
23 answered.

24 A. There was a confirmation of the vote asked for
25 by Senator Shapleigh and a long delay as they were

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1 taking that and there was a Senator that had checked in
2 that day as being present or he represented himself as
3 being present but actually wasn't present, and they were
4 successful in getting that Senator to the Body even
5 though he had represented that he was there and wasn't
6 there. By the time they did the confirmation, he showed
7 up.

8 Q. (By Mr. Scott) Now in 2009, there was another
9 attempt to pass the Voter ID bill by the Texas
10 Legislature; is that correct?

11 A. Okay, ask that question again, please.

12 Q. Sure. In 2009, there was another attempt to
13 pass a Voter ID bill out of Texas Legislature; is that
14 correct?

15 A. Senate Bill 362.

16 Q. And that passed the Senate; is that correct?

17 A. That is correct.

18 Q. Describe, if you would, what chubbing is?

19 A. In the Texas House, their order of bringing
20 bills up, they have several choices of how a bill could
21 be listed, and once it's put on the regular order of
22 business, they don't have the ability, like it is in the
23 House, where you can be suspend the rules to move a bill
24 out of order. You have to take it in the order unless
25 it's considered a major state. The Voter ID bill even

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1 though it should have been considered a major state, for
2 some reason, was not placed on major state, it was place
3 in the regular order of business and because there were
4 numerous people ahead of it, you had the ability of
5 members to ask excessive questions or chub the bills
6 above it in order to extend the time. So the time on
7 the clock, which would be 12 o'clock midnight, for -- to
8 hear the bill, that time expired before the bill came up
9 for consideration.

10 Q. So all the bills that were behind -- and I'm
11 sorry, it was SB what?

12 A. 632.

13 Q. All the bills that were behind SB 632 that were
14 -- they would have died at the end, at midnight? That
15 had not passed?

16 A. All the bills that below the bills that were
17 being chubbed died and every person that was carrying
18 that legislation died because of that chubbing.

19 Q. Do you recall any of the types of bills that
20 failed?

21 MS. WESTFALL: Objection, relevance.

22 A. I do.

23 Q. (By Mr. Scott) You do or don't?

24 A. I could not give you examples of the bills
25 other than there were multiple of those bills that were

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1 very important to the state.

2 Q. Had you ever seen chubbing like occurred over
3 SB 362?

4 MS. WESTFALL: Objection, relevance.

5 A. Unfortunately chubbing is -- has happened
6 before but it was probably excessive on this particular
7 bill.

8 Q. (By Mr. Scott) 2011, SB 14 passed out of the
9 Senate by not requiring two-thirds for Voter ID; is that
10 correct?

11 A. That's correct.

12 Q. In your mind, do you think whoever made the
13 decision to treat Voter ID differently in 2011 as
14 compared to 2007, 2009, has to do with the fact that the
15 bill was continually blocked by a vocal group of
16 Democrats even though a vast majority of Texans approved
17 of the additions?

18 MS. WESTFALL: Objection, calls for
19 speculation. Objection, asked and answered.

20 Q. (By Mr. Scott) You may answer.

21 A. The bill actually was heard by special order in
22 2009 and 2011. The special order was put in place in
23 the rules at that time. Special order actually was not
24 unusual. This special order had been used multiple
25 times, more especially by the Democratic Lieutenant

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1 Governor, during the period from '72 to '92 when he was
2 in office, approximately 15 times that he used the
3 special order. So bills that are -- have an importance
4 to Texas, will be put on as a special order.

5 Q. How long have you served again in the State
6 Senate and the House?

7 A. I came into the House in 1988, served in '93,
8 came to the Senate in '97 and I've been in the Senate
9 since '97.

10 MR. SCOTT: Let me take a break and let me
11 mark these. Let's go off the record and mark these as
12 exhibits real quick.

13 (Exhibits 40, 41, 42, 43 and 44 marked for
14 identification.)

15 MR. SCOTT: 45's the next one but I don't
16 have anymore so that's it.

17 THE COURT REPORTER: Okay.

18 MS. WESTFALL: I want to object to the
19 caucusing in the middle of this exam between counsel.

20 MR. HALPERN: There's no question pending,
21 Counsel.

22 MS. WESTFALL: Well then, let's take away
23 the exhibits from the witness.

24 MR. SCOTT: Oh, that's just -- so for the
25 record, caucus between counsel, it wasn't me caucusing

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1 with anybody, just for the record.

2 MS. WESTFALL: No, I understand. No, I
3 understand, Mr. Scott. I understand.

4 MR. SCOTT: I was just letting the witness
5 look at the exhibits just so to maybe --

6 MS. WESTFALL: Right.

7 MR. SCOTT: -- fast forward some
8 stuff. Well, I was going mark a couple of more
9 exhibits. Let me -- let's go ahead and ask some
10 questions though.

11 Q. (By Mr. Scott) Senator, if you would turn to, I
12 believe the first document is Exhibit 40. Have you seen
13 that document before?

14 A. Yes, I have.

15 Q. What is that?

16 A. That's a poll taken by the University of Texas,
17 July 2008. The questions that were asked, per Voter ID,
18 they were asked, "Do you support a law requiring an
19 individual to present a government issued photo ID and
20 in order to be permitted to vote?" A full photo ID.

21 Q. And that is information you had and looked at
22 before the passage of SB 14, correct?

23 A. And this was July '08, so this was actually
24 delivered to me prior to the 2009 session. And the
25 results showed that at that time, 73 percent of Anglos

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1 favored a full photo ID, 68 percent of Black -- or
2 African-American and 65 percent of Hispanics.

3 Q. Okay. So let's turn over to Exhibit 41.

4 A. Okay.

5 Q. What is that document?

6 A. That is the Lighthouse opinion poll that was
7 done prior to January 10, 2011, two weeks prior to the
8 passage of Senate Bill 14.

9 Q. And did it ask -- was there information in
10 Exhibit 41 relating to Voter ID?

11 A. It was a question asked, "Do you favor or
12 oppose requiring a valid photo ID before a person is
13 allowed to vote?"

14 Q. And what were the breakdown of the percentages
15 in support?

16 A. White, 86 percent; African-American, 82
17 percent; Hispanic, 83 percent.

18 Q. And to your knowledge, who was provided that
19 information in the poll that is contained in
20 Exhibit 41 in the Texas Legislature?

21 A. This was a public poll, a statewide landscape
22 benchmark survey and it was provided to the public. Do
23 you have -- I had access -- I had this information when
24 I laid out Senate Bill 14.

25 Q. Do you know if any other state Senators had

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1 that information contained in Exhibit 41?

2 A. It's likely that probably all 31 had this.

3 Q. Okay. Let me get you to turn your attention
4 now to Exhibit 42.

5 A. Could I go back on the question?

6 Q. Absolutely. Is there something else in Exhibit
7 41 that you --

8 A. Not only did all 31 have this but this was
9 reference I made repeatedly in the discussion of the
10 bill asking how the opposition Senators could be against
11 this when they had 80 percent -- 82 percent of the
12 African-Americans in favor of a photo ID and 83 percent
13 of Hispanics.

14 Q. Do you know if you were provided any
15 information by any of the opponents of SB 14 prior to
16 the passage of SB 14 of any polling that was -- showed
17 negative results? I mean, kind of contra results to
18 what you're looking at in Exhibit 41?

19 A. In 2007, 2009, 2011, I asked that question
20 multiple times of the opponents of the bill to please
21 show me polling that would reflect their views of
22 their -- the people in their district to show any
23 opposition to this, and to my knowledge, I was never
24 shown any polls they had that would show opposition to a
25 valid photo ID.

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1 Q. You're elected by the citizens of your Senate
2 district, correct?

3 A. Yes.

4 Q. What happens to Senators who fail to heed the
5 wishes of their constituents?

6 A. You're sent to Austin to vote the wishes of the
7 people that elected you, and the assumption is that if
8 you don't vote the wishes of the district, that they
9 would likely not support you.

10 Q. So the next exhibit is Exhibit 42; is that
11 correct?

12 A. Yes.

13 Q. What is that?

14 A. This is a -- the Institute of Public Policy.
15 This is a study that was done. The person issuing the
16 report was Jeffrey Milyo from the University of
17 Missouri.

18 Q. And what was the relevance of that -- well,
19 first of all, did you review that report prior to the
20 passage of SB 14?

21 A. Yes, I did.

22 Q. And what relevance, if any, did it come to play
23 in your mind in forming your decision to vote for?

24 A. Jeffrey Milyo did a study looking at Indiana
25 and then some from other states like Georgia of the

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1 effect of voter turnout by the passage of a Voter ID
2 bill. The results that he came up with is that not only
3 there was a negative results based on turnout and/or
4 minority turnout, in cases of Indiana and in Georgia,
5 actually, there was an increase in turnout after the
6 passage of the Voter ID bill.

7 Q. If you could turn your attention to Exhibit 43.

8 A. Yes.

9 Q. What is that?

10 A. That is a report from Heritage Foundation or
11 Heritage Center for Data Analysis. The report was done
12 by David Muhlhausen, Ph.D.

13 Q. And did you have Exhibit 43 -- access to it
14 prior to the passage SB 14?

15 A. Yes, I did.

16 Q. And what role, if any, did it play in your
17 consideration -- or in coming to your opinions?

18 A. This analysis was done all the way back to 2000
19 and examined the -- also the elections that had happened
20 after the implementation of both the Indiana, Georgia
21 and other state's bills. Their results mirrored the
22 Missouri results, that not only was the turnout in the
23 election not lower, it actually showed in some cases to
24 be higher, and it was reflected across all lines,
25 both White, Hispanic and African-American showed not a

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1 depression but, in most cases, an increase in voting.

2 Q. And would you turn now to the next exhibit, I
3 believe that's 44.

4 A. 44, yes.

5 Q. And what is that?

6 A. This is an another study by the University of
7 Delaware, Jason Mycoff, and he was looking at the
8 effects of Voter ID laws present and absent. He looked
9 at the same issues addressing what had happened with the
10 Indiana Voter ID law, the explanation of what happened
11 in Crawford V Marion through the Supreme Court and the
12 determination of how it affected both turnout of the
13 Anglos, African-Americans and Hispanics, and determined
14 that there was not only a negative factor, but the
15 turnout in all three factors had actually increased.

16 Q. And did you have custody of that document prior
17 on the passage of SB 14?

18 A. Yes, I did.

19 Q. Did you attempt to share these studies with
20 your colleagues in the Senate?

21 A. Yes, I did.

22 Q. Prior to the passage of SB 14?

23 A. Yes, I did.

24 Q. And were they made freely available to both
25 proponents and opponents?

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1 A. Yes. And I would like to make an additional
2 reference on this, actually. During the laying out of
3 the bill in 2007, Senator Zaffirini had noticed that I
4 had a huge book with all of this in there, and she asked
5 to see it. I not only gave it to her, but I made sure
6 that she was aware of all the things I had in the book
7 pertaining to these, that they had received.

8 (Exhibit 45 marked for identification.)

9 Q. (By Mr. Scott) Let me hand you what's been
10 marked as Exhibit 45 to your deposition.

11 A. Yeah.

12 Q. Have you ever seen that document?

13 A. Yes, I have.

14 Q. What is it?

15 A. It was a poll done by the University of Texas
16 in which we received in February of 2011, the poll
17 actually was taken in December of 2010. It was a
18 follow-up to the 2008 poll of basically asking the same
19 questions saying, "Do you agree or disagree that
20 registered voters should be required to present a
21 government issued photo ID before they can be allowed to
22 vote?" Of the people that they polled, 75 percent
23 agreed. The racial makeup of the poll showed that it
24 was broadly agreed to even among Democrats and
25 Republicans and that if you looked at the racial makeup

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1 of who agreed with this, 80 percent of Anglos agreed, 63
2 percent of African-Americans and 68 percent of Latinos.
3 The Latino number actually increased in that two-year
4 period.

5 Q. And did you -- and you had that in your
6 possession prior to the passage of SB 14?

7 A. Yes, I did. And I made this available to all
8 31 members.

9 (Exhibit 46 marked for identification.)

10 Q. (By Mr. Scott) I hand you what's been marked as
11 the Exhibit 46 to your deposition. Have you seen this
12 document?

13 A. This is a follow-up poll, I believe, to -- by
14 the University of Texas.

15 Q. And what were the results of that poll? Well,
16 first of all, what did they poll?

17 MS. WESTFALL: Objection, relevance. This
18 is past the enactment.

19 Q. (By Mr. Scott) You may answer.

20 A. This poll was taken after the bill was passed,
21 enacted, but it has not been enacted into law because
22 Texas did not enjoy the benefits of Voter ID law until
23 after the -- the ruling by the Supreme Court, Section
24 5. The question they asked, "Do you agree or disagree
25 with the idea that registered voters should be required

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1 to present a government issued photo ID before you can
2 be allowed to vote?" The numbers continued to be the
3 same as the prior numbers we had seen. The makeup of --
4 on this poll, the Hispanic numbers actually increased
5 again from 68 percent to 75 percent.

6 MS. WESTFALL: Objection, I'm going to
7 move to strike this narrative response.

8 Q. (By Mr. Scott) Let's go by this -- taking time,
9 I'm sorry.

10 So, if I could, get you to turn to the
11 first slide on Exhibit 46.

12 A. Okay.

13 MS. WESTFALL: And Counsel, I'd like a
14 that standing objection to relevance --

15 MR. SCOTT: That's fine.

16 MS. WESTFALL: -- given that this is after
17 the -- well after the enactment of the bill.

18 Q. (By Mr. Scott) And so, Senator, on the first
19 slide, would you -- what was the question posed to the
20 -- for purposes of obtaining the polling?

21 A. "Do you agree or disagree with the idea that
22 registered voters should be required to present a
23 government issued photo ID at the polls before they can
24 be allowed to vote?"

25 Q. And were -- what was the percentage of people

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1 agreed?

2 A. 66 percent agreed.

3 Q. And let's look over at Section 5. What was the
4 question?

5 A. "Do you agree with the idea of the registered
6 voter should be required to present a government issued
7 ID at the polls before they can be allowed to vote?"

8 Q. And what were the percentages by party in
9 agreement?

10 A. You actually had three different categories
11 here because the -- there were people that called them
12 "Independents" in 2012. Along party lines, 92 percent
13 of Republicans; 37 Democrat; but Independents, 73
14 percent said that they should, which gave an overall
15 total of 66 percent.

16 Q. And if you'll turn over to the fourth slide,
17 would you read the question -- the poll question on
18 that?

19 A. "Do you agree or disagree with the idea that
20 registered voters should be required to present a
21 government issued photo ID at the polls before they can
22 be allowed to vote?"

23 Q. And what were the percentages of agreement
24 based upon race?

25 A. That this -- you're asking the race?

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1 Q. Yes.

2 A. Okay. That would be the fourth page, and it is
3 the same question. White voters at that time were 71
4 percent; African-American, 33 percent; Hispanics were 75
5 percent.

6 Q. So let's close that.

7 Let's look at Exhibit 33.

8 A. 33?

9 Q. Yes, sir.

10 A. Okay. Where would 33 be? I'm going to have to
11 dig it out.

12 Q. While you're looking for that, do you have an
13 opinion whether the Texas Tribune would be considered a
14 conservative publication?

15 MS. WESTFALL: Objection, calls for
16 speculation, relevance.

17 Q. (By Mr. Scott) How would you describe the Texas
18 Tribune?

19 A. They are generally not regarded as a
20 conservative group.

21 Q. And have you found Exhibit 33?

22 A. I have.

23 Q. Let me ask you a couple of questions first. As
24 the bill sponsor, is it part of your obligation in order
25 to try to get your bill passed, to understand what votes

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1 you've got and what votes you don't have?

2 A. Yes.

3 Q. And in doing so, how do you get -- well, how do
4 you get to that position where know basically whether
5 you have somebody's vote or not?

6 A. The Senate, generally, you have a private
7 conversation with each member.

8 Q. And with regard to Exhibit 33, is there
9 anything in Exhibit 33 that you believe, had the people
10 who voted for SB 14 actually had, would have changed the
11 support that you ultimately received from them in the
12 passage of SB 14?

13 MS. WESTFALL: Objection, compound,
14 confusing, calls for speculation.

15 Q. (By Mr. Scott) You may answer.

16 A. This report, the fact that it says it -- you
17 know, was not conclusive, and they say there -- it may
18 not have been issued, the Secretary of State has agreed
19 that they did not have the data available to compare
20 this, and Public Safety, the same thing, and there was
21 not a single person that if they had had this data at
22 the time of the vote would have changed their vote.

23 MS. WESTFALL: Objection, move to strike.
24 This witness testified he'd never seen this document
25 before and he's testifying as to the Secretary of

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1 State's interpretation and intent.

2 MR. SCOTT: No further questions.

3 Thanks.

4 MS. WESTFALL: I think we need a minute
5 outside.

6 (Recess from 7:09 p.m. to 7:26 p.m.)

7 EXAMINATION

8 BY MR. SHORDT:

9 Q. Senator, my name is Richard Shordt. I'm with
10 the Texas League of Young Voters.

11 A. Are we back on the record?

12 MR. SHORDT: Sorry. Are we on the record?

13 THE COURT REPORTER: Well, yes. I thought
14 she was going to be asking the questions, so...

15 MS. HALPERN: And it's not appropriate
16 switching off.

17 THE WITNESS: And there's four minutes
18 left?

19 MR. SHORDT: We'll discuss that.

20 MS. HALPERN: Well, let them get started,
21 but I'm surprised that you're doing the questioning and
22 not the counsel who started this deposition.

23 MR. SHORDT: Well, we represent the same
24 party.

25 MS. HALPERN: I understand that, but

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1 normally the rule is only one lawyer per party.

2 MR. SHORDT: We're not really interrupting
3 a line of questioning.

4 MS. HALPERN: Well, I'll let you go ahead,
5 but --

6 MR. SHORDT: I don't remember you raising
7 an objection when Reed and Mr. Scott were switching on
8 and off, but we can go ahead.

9 MR. HALPERN: Well, I'm not responsible
10 for that.

11 Q. (By Mr. Shordt) Senator, I'd like to talk to
12 you about a few exhibits that Mr. Scott examined you
13 on. First is Exhibit Number 40 -- I'm sorry,
14 Exhibit 45, apologies, it's the Texas Politics poll.

15 MR. HALPERN: Which year, Counsel?

16 MR. SHORDT: February of 2011. I'm going
17 to ask about all three of them.

18 Q. (By Mr. Shordt) Do you have that?

19 A. I have it.

20 Q. Now, can you read what the first question is,
21 it says, "Do you agree or disagree?" Can you read that
22 question, please?

23 A. "Do you agree or disagree that registered
24 voters should be required to present a government issued
25 photo ID before they can be allowed vote?"

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1 Q. And you a said that this poll is one of the
2 polls that you used as a basis to suggest that a photo
3 ID requirement --

4 A. It was one of the polls that we did reference
5 of a poll that was taken.

6 Q. If this poll says that voters should be
7 required to present, quote, "a government issued photo
8 ID," why doesn't SB 14 include all government issued
9 photo IDs?

10 A. Would you ask the question again?

11 Q. This poll says, the question is, "Voters should
12 be required to present a government issued photo
13 ID." You pointed to the overwhelming support of 75
14 percent supporting this statement as a defense of
15 including a photo ID requirement in Texas. Why does
16 SB 14 not include all government issued photo IDs?

17 A. I believe it says "a government," not "all
18 government photo IDs." "A government issued photo ID"
19 is what is represented in Senate Bill 14.

20 Q. Well, are there more than one photo IDs in SB
21 14; is that correct?

22 A. There's either four or five examples, yes.

23 Q. And can you point me anywhere in this poll
24 where the individuals are questioned about only those
25 photos IDs included in SB 14?

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1 A. I don't believe this poll had reference to
2 Senate Bill 14. I believe this was an independent poll
3 done by the University of Texas asking the citizens of
4 the state of Texas independently of any legislation, "Do
5 you agree" --

6 Q. Can you --

7 A. Not could you -- do you mind if I finish?

8 Q. I'm sorry.

9 A. Do you agree or disagree that registered voters
10 should be required to present a government -- a
11 government issued photo before they can be allowed to
12 vote, and 75 percent of the public agreed with that, and
13 the agreement was broad across all demographic lines of
14 ethnicity.

15 Q. Can you point me where in this exhibit it
16 defines what a government issued photo ID is?

17 A. I can only read you what the question was
18 asked, and I don't think that probably was -- it was a
19 very clear question to the public, and if they asked
20 John Q. Public that question, they left the question to
21 stand on it's own.

22 Q. Can you point me where in this poll it
23 identifies a government issued photo ID as a driver
24 license?

25 A. I don't believe that's the question. I think

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1 the question is: Should voters have to present a
2 government issued photo ID? And this is not directly
3 connected to any piece of legislation. The voters were
4 asked should they show a photo ID and they said yes.

5 Q. Does this poll anywhere identify what a
6 government issued photo ID is?

7 MS. HALPERN: Counsel, I'm going to
8 object. You're past the four minutes. I'm going to
9 allow you to continue with your questioning, but I'm not
10 going to allow it if you continue to ask the same
11 question 17 times in a document that speaks for itself.
12 It's either there or it's not, and asking this witness
13 whether it's there or it's not isn't going to change the
14 fact it is there or it's not. So I'm indulging you by
15 giving you extra time. I'd appreciate it if you didn't
16 waste it.

17 Q. (By Mr. Shordt) I'd appreciate it if, Senator
18 Fraser, if you could answer my question: Does this poll
19 define what a government issued ID is?

20 A. In a poll the question that is asked is the
21 question that is asked. They asked the question that I
22 read to you. The question I think speaks for itself.

23 Q. Senator, do you recall the questioning from
24 Ms. Westfall with respect to Exhibit 37?

25 A. You're going to have to help me what 37 is and

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1 what questioning you're representing.

2 Q. Well, I -- when you find it, I'll ask a more
3 specific question.

4 MS. HALPERN: Was 37 asked about on the
5 cross?

6 MR. SHORDT: Ms. Westfall asked it.

7 MR. HALPERN: Well, she asked about it.
8 You're suppose to responding to the cross examination.
9 He wasn't asked about that in the cross examination, so
10 it's beyond the scope.

11 MR. SCOTT: Okay.

12 Q. (By Mr. Shordt) So can you tell me does this
13 poll, the poll in Exhibit 45, reference strict photo
14 IDs?

15 A. I believe the question stands on its own that
16 it says a government issued photo ID for --

17 Q. Do you recall -- sorry.

18 A. Do you mind? I'd love to answer if you don't
19 interrupt me, please.

20 Q. Go ahead.

21 A. Would you allow me to finish my response?

22 Q. Yes.

23 A. Thank you.

24 The question clearly says that should a
25 government issued photo ID be required before they're

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1 allowed to vote. The question stands on its own.

2 Q. Okay. Do you recall when Ms. Westfall asked
3 you with respect to Exhibit 37 and read into testimony,
4 "Do you agree or disagree with the idea that registered
5 voters should be required to present a government issued
6 photo ID at the polls before they can be allowed to
7 vote," do you recall telling her that was not your
8 understanding of the question in the poll and you stated
9 that the question asked about strict photo ID?

10 A. Okay. I have no idea what you just said. If
11 you'd like to repeat that and slow down. I can't follow
12 you what you're saying.

13 MR. SHORDT: Chris, would you please
14 repeat the question?

15 MS. HALPERN: Is this the clarification he
16 made after we came back from the break or the testimony
17 he gave before the clarification, Counsel?

18 MR. SHORDT: This is the testimony that he
19 gave. He didn't give a clarification with respect to
20 this.

21 MR. HALPERN: Actually, I think he did.

22 MR. SHORDT: I don't believe that he did.

23 (Requested portion read back by the court
24 reporter.)

25 A. So what is the question?

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1 Q. (By Mr. Shordt) Do you recall that testimony?
2 Do you recall that testimony from earlier this
3 afternoon?

4 MS. HALPERN: He just read it back to you.

5 A. Yeah. The answer is yes.

6 Q. (By Mr. Shordt) So is it fair to say that this
7 poll does not include the words "strict photo ID"?

8 A. The poll that they're asking was not
9 commissioned by anyone connected with Senate Bill 14.
10 This was a poll that was commissioned independently
11 that -- by the University of Texas and was released. I
12 saw the poll and the poll asked a question and the
13 question is very clear and the words speak for
14 themselves.

15 Q. That's not what I asked you, Senator. I asked
16 you if the words "strict photo ID" appear anywhere in
17 this document?

18 A. In what document?

19 Q. Exhibit 45.

20 A. The wording that is -- the question clearly
21 says that you present a government issued photo ID.

22 Q. Do you agree that there are more government
23 photo IDs that exist than are included in SB 14?

24 A. It says "a government photo ID."

25 MR. HALPERN: Let's just answer his

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1 question.

2 A. Do I agree that are there more than what is
3 included? The answer is yes.

4 Q. (By Mr. Shordt) And you don't know how any
5 single respondent to this poll interpreted the phrase "a
6 government issued photo ID;" is that correct?

7 A. It would be subjective for me to project what
8 someone that was asked a poll the way they interpreted
9 this.

10 Q. So the answer is yes?

11 A. The answer is yes.

12 Q. Can you please turn to Exhibit Number 41 that
13 Mr. Scott asked about.

14 A. I don't know where 41 is. Well, here it is
15 right here. Got it.

16 Q. And I'll point you to what is page 3, Bates
17 TX_00009047.

18 A. Got it.

19 Q. Do you see at the bottom where it says Photo --
20 Photo Voter ID Requirement?

21 A. Uh-huh.

22 Q. And can you read that question, please?

23 A. "Do you favor or oppose requiring a valid photo
24 ID before a person is allowed to vote?"

25 Q. Do you understand what a valid photo ID means

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1 in this poll?

2 A. I believe the words speak for themselves.

3 Q. Does the poll define what a valid photo ID is?

4 A. This questionnaire was not connected to --

5 MR. HALPERN: Just answer his question.

6 Is there a definition in the document?

7 A. Is there a definition of the document in the
8 question?

9 Q. (By Mr. Shordt) Sorry. Is "valid photo ID"
10 defined anywhere in this Lighthouse opinion poll?

11 A. No.

12 Q. And is it fair to say that you have absolutely
13 no idea how any respondent to this poll interpreted the
14 phrase "valid photo ID"?

15 A. It would be subjective for me to in any way
16 guess what they -- I think the person had to rely on the
17 question on its face of what it said. This is a
18 question that was asked.

19 Q. So your answer is you do not know how any
20 person interpreted the phrase "valid photo ID"?

21 A. It would be impossible for me to do it other
22 than the question speaks for itself.

23 Q. So your answer is a yes, you don't know how any
24 person interpreted the word -- phrase "valid photo ID"?

25 A. My answer is that the question speaks for

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1 itself and there's going to be no way for me to
2 interpret the way they interpreted it.

3 Q. Can you look at the last page of this poll,
4 please, Survey Geographic Zones is at the top. And I
5 apologize -- yeah, the last page is Texas Bates
6 TX00009052, it's a map.

7 A. My map is not very good, but yes.

8 Q. Does this appear to be a complete map of Texas?

9 A. No.

10 Q. To your knowledge, was this survey taken of
11 voters throughout all of Texas?

12 A. I don't believe I can determine that because I
13 think this probably was a color coded map and there's
14 references to the areas you're talking about. I think
15 you're making an assumption based on the fact that is
16 bad printing off of a bad printer and I don't think it
17 is conclusive what it is because, if you look at the
18 description below that, there's a reference to the
19 Austin area and a code of a color that would have been
20 there and that -- there's a hole in the map where that
21 would have been, but because this is not a color map, it
22 doesn't show up.

23 Q. But you don't know the geographic breakdown of
24 the respondents for this poll?

25 A. It would be impossible for me to determine

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1 because that, the map you're looking at here, has no
2 guidelines of where they, you know, they took the poll,
3 so the question you're asking is impossible to determine
4 based on this map.

5 Q. Can you please turn to page 3?

6 A. On the same exhibit?

7 Q. Yes, sir.

8 A. Got it. Page 3 I'm assuming is 9047?

9 Q. Yes, sir.

10 A. Yes.

11 Q. At the very top, do you see where it says,
12 "Single most important problem facing Texas"?

13 A. Yes.

14 Q. Is lack of confidence in voting any of the most
15 important problems facing Texas?

16 A. I do not see it listed there, but I don't think
17 that was one of the ones -- the things that was asked,
18 the question -- the choices available. I believe if you
19 totaled the numbers of percentages, that will total to a
20 hundred. They gave these people eight choices of
21 questions they could ask. They chose between those
22 eight. The question you're asking was not a choice they
23 included.

24 Q. But this poll does ask about photo voter ID
25 requirements; is that right?

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1 A. Yes.

2 Q. So questions were asked about photo IDs?

3 A. Yes.

4 Q. And you don't believe that any questions --
5 well, strike that.

6 Is photo voter ID requirements listed as
7 one of the single most important problems facing Texas?

8 A. It's not one of the questions they asked.

9 Q. Do you know if any questions were asked about?

10 A. There's no way to determine from this poll.

11 Q. And can you please turn to Exhibit 42.

12 A. 42?

13 Q. Yes, sir.

14 A. Okay.

15 Q. "The Effects of Photographic Identification
16 ffon Voter Turnout in Indiana, a County Level Analysis"?

17 A. Yes.

18 Q. Would you please turn to Page 7 of the report
19 which is Bate stamped Texas 00008826.

20 A. I'm there.

21 Q. I'll point you in the direction to what is
22 Section 5 discussion in the second column halfway down.

23 A. I'm there.

24 Q. Can you look at the first two paragraphs,
25 primarily I have a question about the second paragraph,

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1 so when you've had a chance to review it, please let me
2 know.

3 A. I'm sorry?

4 Q. Let me know when you've had a chance to review
5 it.

6 Have you had as a chance to review it,
7 Senator?

8 A. No.

9 Okay, I've finished reading.

10 Q. Okay. Do you see where it says, "In this
11 study, I exploit the existence of a natural experiment
12 in the impact of photo ID: the change in turnout between
13 the 2002 and 2006 midterm elections in Indiana."

14 Do you understand that this report
15 analyzes election results in the 2006 and 2006 midterm
16 elections in Indiana?

17 MR. HALPERN: I think you misspoke,
18 Counsel. You meant 2002 and 2006?

19 Q. (By Mr. Shordt) I'm sorry, 2002 and 2006.

20 A. I believe that's what it says.

21 Q. Are you aware of whether 2002 or 2006 were
22 presidential election years?

23 A. I believe that they are referring to midterm,
24 and midterm generally means that's not a presidential
25 election year.

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1 Q. Do you understand that -- or in your experience
2 as a Senator, is voter turnout generally higher during
3 midterm elections or general elections?

4 A. The analysis of this is not determining whether
5 turnout was high or low in reference to a midterm or
6 presidential year. They compared it to like midterm
7 years and other midterms.

8 Q. But that wasn't quite my question. Is turnout
9 generally higher in a midterm elections, Senator, or --

10 A. In a presidential year, it generally is higher.

11 Q. So do you think that an analysis of midterm
12 elections would accurately reflect turnout rates in a
13 presidential election then?

14 A. Well, as someone who's been in politics for a
15 long time, I can tell you that the -- anytime that you
16 look at polling data, you always look at midterm.
17 Because in a presidential race, it depends on the
18 candidates running and you can have anomaly that
19 happens. And we had an anomaly 2008 because Obama was
20 able to turn out a large portion of voters that normally
21 wouldn't vote.

22 In the midterm prior to that, in 2006 and
23 the midterm of 2002, normally you do not have that
24 anomaly and you get a very like sample so the
25 representation is better, and that's the reason they

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1 used 2002 and 2006.

2 Q. But is true that more people will vote in a
3 presidential election year?

4 A. I know the question you're asking, but this
5 report is referencing a study in 2002, 2006, and it has
6 nothing do with a presidential year.

7 Q. So it has nothing to do with analyzing an
8 election where more people will likely vote?

9 A. Not if there's an anomaly because of the
10 presidential election turning out an abnormally -- an
11 abnormal number of people. They're looking at comparing
12 apples and apples. If you used a reference of what
13 happened in 2002 and 2006, it is apples and apples with
14 other midterm elections.

15 Q. Do you think that 2008 was the only
16 presidential abnormality election?

17 A. I was using 2008 as an example, but generally
18 you'll have, if you're going to have an abnormal
19 turnout, it will be in an highly contested presidential
20 election.

21 Q. One last question: You testified with respect
22 to the amendments that were offered by legislators less
23 than 24 hours prior to consideration of SB 14, and
24 correct me if I'm mischaracterizing your testimony, but
25 there was not enough time to analyze the amendments; is

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1 that correct, sir?

2 A. I testified that in the Senate, both policy and
3 the request to turn in amendments, so we're allowed to
4 look at the physical impact and the input back from the
5 agencies of the implementation of the -- of the
6 amendment, and the reason you do that in advance is that
7 it helps the person carrying the amendment chances of
8 passing because it allows the agency that impact.

9 Generally in the legislature, if an
10 amendment is dropped in late; i.e., you only have a few
11 minutes to look at it, its chances of passage are very
12 thin or unlikely, because you do not have sufficient
13 time to analyze the impact of the -- of the amendment
14 that's offered.

15 Q. What would a sufficient time to analyze the
16 amendment offered be?

17 A. 24 hours.

18 Q. And do you feel that two weeks is enough time
19 to analyze the sufficiency of a major piece of
20 legislation like SB 14?

21 A. I would think two weeks would be, yes.

22 Q. Were there any amendments offered that were not
23 provided 24 hours ahead of time that were adopted?

24 A. I -- I do not know the answer to that. I would
25 think it is the likelihood that the CL -- the concealed

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1 handgun amendment license by Senator Hinojosa, I don't
2 think we had 24 hours notice, but that was an amendment
3 that was easy to analyze because we knew the impact
4 because it was already -- there wasn't a fiscal impact
5 because it was already in place.

6 Q. So you did make some exceptions to the 24-hour
7 rule?

8 A. If we were able to analyze the amendment.

9 Q. Okay. And can you tell me is it true that the
10 time of floor consideration was changed for -- from
11 9:20 p.m. on January 26, 2014 to the daytime hours on
12 January 26, 2014, so the public could watch? Is that
13 accurate?

14 A. Say it -- ask the question again, please.

15 Q. Was the time of floor consideration for SB 14
16 changed from 9:20 p.m. on January 26, 2014, to the
17 daytime hours on January 26, 2014, so the public could
18 watch?

19 A. I still am not getting the question. You're
20 asking --

21 Q. Let me ask you this. Sorry to cut you off, but
22 I want to ask it probably a different way. Do you
23 recall when consideration of SB 14 began?

24 A. No.

25 Q. Do you recall if it was in the morning or

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1 afternoon or evening?

2 A. No. This is Senate Bill 14 you're referring
3 to?

4 Q. Yes, sir.

5 A. No, I'm sorry, I do not remember.

6 MR. SHORDT: I have no further questions.

7 MS. WESTFALL: I have one exhibit.

8 MR. HALPERN: Let the record reflect that
9 y'all have had 25 minutes now. I'm going to let you ask
10 your question.

11 MS. WESTFALL: Could you mark this?

12 (Exhibit 47 marked for identification.)

13 FURTHER EXAMINATION

14 BY MS. WESTFALL:

15 Q. Senator, you've been handed what's been marked
16 as Exhibit 47. Do you recognize this document?

17 A. I do not recognize the document, no.

18 Q. Were you copied on this document in another
19 version? Were you sent this separately?

20 A. I'm sorry?

21 Q. Were you sent this letter from Senator Van de
22 Putte separately?

23 A. If you will give me a second to look at it.

24 Q. Take your time.

25 A. What was your question?

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1 Q. Were you sent this letter yourself from Senator
2 Van de Putte? Or copied?

3 A. I do believe our office received this, yes.

4 Q. Do you see that this is a letter sent January
5 21, 2011?

6 A. Yes.

7 Q. And it's sent from Senator Van de Putte to
8 Senator Duncan?

9 A. Yes.

10 Q. And was Senator Duncan presiding over
11 consideration of Senate Bill 14?

12 A. I do believe that he had been asked by the
13 Lieutenant Governor to preside over the hearing.

14 Q. And that was before the Committee of the Whole;
15 is that correct?

16 A. That was on January 21. This is January 21.
17 The bill was heard on the 25th, I believe.

18 Q. And was that in committee on the 25th and then
19 on the floor on the 26th?

20 A. I'm sorry, I don't have that data in front of
21 me, so I can't answer that.

22 Q. That's okay. Don't worry about it.

23 Do you see that this letter expresses in
24 the first paragraph concern about the timing of the
25 public hearing on Voter ID?

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1 A. Yes.

2 Q. And does Senator Van de Putte also express
3 concern in the second paragraph about the notice
4 provided to all senators about when the Committee of the
5 Whole hearing on Senate Bill 14 would be held?

6 A. Yes.

7 Q. Does Senator Van de Putte further express --
8 contrast the notice senators were afforded in 2011 with
9 the notice provided in 2009 in the last paragraph of the
10 first page?

11 A. Yes.

12 Q. And turning to the second page of Exhibit 47,
13 do you see that Senator Van de Putte also expresses that
14 under the Senate rules there was concern that there was
15 inadequate notice of the timing of the Committee of the
16 Whole hearing?

17 A. Where is the --

18 Q. That would be three paragraphs down. Do you
19 see that concern?

20 A. Yes, I do.

21 Q. Do you recall that Committee of the Whole
22 hearing was held on January 25th, 2011?

23 A. Again, I don't have that in front of me, but if
24 you represent the hearing was on the 25th, yes.

25 Q. I will represent that to you, and I prefer not

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1 to use another exhibit so we can all save time.

2 And do you remember that the floor
3 consideration on all the amendments were considered on
4 the 26th of January? I'll represent that to you.

5 A. Okay.

6 Q. Do you recall that initially there was going to
7 be requirement of 24 hours between Committee of the
8 Whole consideration of Senate Bill 14 and the floor
9 consideration of Senate Bill 14 as required by Rule 5.11
10 of the Senate rules?

11 A. Yes.

12 Q. And that was agreed to initially; is that
13 correct?

14 A. Yes.

15 Q. And then the time was shortened in order to
16 allow the public to watch the debate on television?

17 A. I'm not aware of that, no.

18 Q. Did the debate and the amendments, were they
19 offered during the daytime hours or earlier than
20 9:20 p.m. on January 26th?

21 A. I believe you are correct. This is on the
22 26th?

23 Q. Yes.

24 A. Yes.

25 MS. WESTFALL: Thank you for your time,

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1 Senator.

2 MR. SCOTT: Free at last.

3 (Deposition concluded at 7:57 p.m.)

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1 CHANGES AND SIGNATURE

2 RE: VEASEY, ET AL. VS. PERRY, ET AL.

3 PAGE LINE CHANGE REASON

4

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20 I, SENATOR TROY FRASER, have read the foregoing
21 deposition and hereby affix my signature that same is
22 true and correct, except as noted above.

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24

25

SENATOR TROY FRASER

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1	IN THE UNITED STATES DISTRICT COURT	
2	FOR THE SOUTHERN DISTRICT OF TEXAS	
3	CORPUS CHRISTI DIVISION	
3	MARC VEASEY, et al.,)
)
4	Plaintiff,)
)
5	VS.) CIVIL ACTION NUMBER:
) 2:13-CV-193 (NGR)
6	RICK PERRY, et al.,)
)
7	Defendants.)
)
8	UNITED STATES OF AMERICA,)
9)
	Plaintiff,)
10)
	VS.) CIVIL ACTION NUMBER:
11) 2:13-CV-263 (NGR)
	TEXAS LEAGUE OF YOUNG VOTERS)
12	EDUCATION FUND, et al.,)
)
13	Plaintiff-Intervenors,)
)
14	TEXAS ASSOCIATION OF HISPANIC)
	COUNTY JUDGES AND COUNTY)
15	COMMISSIONERS, et al.,)
)
16	Plaintiff-Intervenors,)
)
17	VS.)
)
18	STATE OF TEXAS, et al.,)
)
19	Defendants.)
)
20	TEXAS STATE CONFERENCE OF)
21	NAACP BRANCHES, et al.,)
)
22	Plaintiffs,)
) CIVIL ACTION NUMBER:
23	VS.) 2:13-CV-291(NGR)
)
24	NANDITA BERRY, et al.,)
)
25	Defendants.)

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1 BELINDA ORTIZ, et al.,)
)
2 Plaintiffs,)
)
3 VS.) CIVIL ACTION NUMBER:
) 2:13-CV-348(NGR)
4 STATE OF TEXAS, et al.,)
)
5 Defendants.)
)

6
7 REPORTER'S CERTIFICATION
8 HIGHLY CONFIDENTIAL DEPOSITION OF
9 SENATOR TROY FRASER
10 JULY 23, 2014

11 I, Chris Carpenter, Certified Shorthand Reporter in
12 and for the State of Texas, hereby certify to the
13 following:

14 That the witness, SENATOR TROY FRASER, was duly
15 sworn by the officer and that the transcript of the oral
16 deposition is a true record of the testimony given by
17 the witness;

18 That the deposition transcript was submitted on the
19 _____ day of _____, 2014, to the witness or to the
20 attorney for the witness for examination, signature and
21 return to _____,
22 by _____, 2014, and if returned,
23 the original transcript will forwarded to Tania
24 Faransso, the custodial attorney;

25 That the amount of time used by each party at the
deposition is as follows:

Ms. Faransso: 4 hours, 13 minutes

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1 Ms. Westfall: 2 hours, 4 minutes
Mr. Derfner: 19 minutes
2 Mr. Scott: 37 minutes
Mr. Shordt: 31 minutes
3

4 I further certify that I am neither counsel for,
5 related to, nor employed by any of the parties or
6 attorneys in the action in which this proceeding was
7 taken, and further that I am not financially or
8 otherwise interested in the outcome of the action.

9 Certified to by me this 24th of July, 2014.

10

11

12





13

Chris Carpenter, Texas CSR 1151
Expiration Date: 12/31/2014
701 Brazos, Suite 380
Austin, TX 78701
(512)292-4249

14

15

16 Firm Registration No. 344

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